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EA-87-02



Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 401

DATE: Monday, October 26, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

FARR
ASSOCIATES &
REPORTING INC.

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2300 Yonge St. Suite 701 Toronto, Canada M4P 1E4

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FARR &
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REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Monday, October
26, 1992, commencing at 9:10 a.m.

VOLUME 401

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member



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A P P E A R A N C E S

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| MS. M. SWENARCHUK |) | FORESTS FOR TOMORROW |
| MR. R. LINDGREN |) | |
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I N D E X O F P R O C E E D I N G S

| <u>ARGUMENT:</u> | <u>Page No.</u> |
|------------------|-----------------|
| Swenarchuk) | 68645-68660 |
| Lindgren) | 68660-68735 |
| Swenarchuk) | 68737-68759 |
| Lindgren) | 68760-68782 |
| Swenarchuk) | 68782-68801 |

I N D E X O F E X H I B I T S

| <u>Exhibit No.</u> | <u>Description</u> | <u>Page No.</u> |
|--------------------|---|-----------------|
| 2322 | Covering letter dated October 26th, 1992 from Kate Murphy to Mr. Lindgren and attached memorandum from John McNicol to Mr. Lindgren dealing with undertaking given during MNR reply evidence panel No. 1 found at Volume 386 pps 66583 to 66591 dated October 23rd, 1992. | 68802 |

1 ---Upon commencing at 9:10 a.m.

2 MADAM CHAIR: Good morning, Ms.
3 Swenarchuk.

4 We are ready to hear your argument.
5 Please start.

6 MS. SWENARCHUK: Thank you, Madam Chair.

7 ARGUMENT BY MS. SWENARCHUK:

8 Good morning, Madam Chair, Mr. Martel.
9 Forests for Tomorrow appreciates this
10 opportunity to assist you with the final summation of
11 the position of Forests for Tomorrow and with the
12 responses to Industry and MNR summations.

13 We particularly want to invite any
14 questions you may have of us during the two days that
15 we are here. We would appreciate the opportunity to
16 reply.

17 Our clients whose members live throughout
18 Ontario, including within the area of the undertaking,
19 have attempted to present you with a consistent and
20 thoughtful alternative method of carrying out forest
21 practice in Ontario; one that recognizes the need for
22 environmental protection, long-term sustainability of
23 the resource and long-term community stability.

24 You will recall that we presented two
25 opening statements during the case; one on the long ago

1 date of May 10th, 1988 and another at the commencement
2 of the FFT case on October 1st, 1992.

3 In the first we referred to our concerns
4 with the class assessment approach and our reasons for
5 participating in these proceedings despite these
6 concerns. I just want to review that for you briefly.

7 Forest for Tomorrow considers that using
8 the class assessment approach to an undertaking as
9 diverse and extensive as forestry in Ontario has been
10 inappropriate from the beginning, but the coalition has
11 chosen not to challenge that approach out of a belief
12 that the public interest is better served by a public
13 hearing in the matter than by legal battles about the
14 justification of the class assessment approach.

15 However, Forests for Tomorrow believes
16 that the Board will be faced with numerous procedural
17 and substantive questions arising from the
18 inappropriate use of this approach.

19 We went on to say that we are in the
20 position of having concrete examples of the management
21 process proposed by the Proponent and it is the
22 position of the coalition that examination of actual
23 management plans and the processes by which they were
24 produced will provide the Board with the best evidence
25 available to determine whether the planning process

1 outlined in the Class EA will achieve the purposes of
2 environmental protection required by the Environmental
3 Assessment Act.

4 We went on to talk about the kind of
5 evidence we proposed to bring to you and indicated that
6 the Board will hear evidence about gaps in the process;
7 a gap between the theory of timber management planning
8 as presented in the environmental assessment compared
9 to the experienced reality of the planning process and
10 that the Board will hear evidence about gaps between
11 the timber management plan which emerges at the end of
12 the planning process and what subsequently happens on
13 the ground.

14 In our opening statement at the
15 commencement of FFT's evidence we brought to your
16 attention the following:

17 "To our knowledge no intervenors in
18 Canada have been faced with the scale of
19 the task that has met my clients..." I
20 said,

21 "...that of replying to evidence
22 developed and presented over two and one
23 half years by parties as well funded as
24 the largest ministry of the largest
25 province in Canada and the Ontario

1 section of Canada's leading industry. My
2 client's relatively limited resources by
3 comparison have of necessity limited the
4 number and scale of issues to which they
5 are able to respond."

6 A review of these opening statements and
7 of the evidence and submissions we have led discloses
8 that the Forests for Tomorrow position has been a
9 consistent one.

10 FFT does not advocate the elimination of
11 clearcutting, for example, or the scrapping of the FMA
12 system or the elimination of all pesticide use,
13 although each of these conditions would enjoy a measure
14 of public support. Rather, it proposes a responsible,
15 evolutionary, phased-in program of reforms in forest
16 practises long overdue in Ontario.

17 In its questions to the parties, the
18 Board queried what treatment should be accorded to the
19 moving target issue; that is changes in the Proponent's
20 case such as Direction 90's. We would add to that the
21 sustainable forestry initiatives.

22 Our response on the law to that issue is
23 at page 37 of our written submissions and indicates
24 that such changes can be fully accommodated to the
25 extent that they have occurred in this case within an

1 EA hearing.

2 More fundamentally, we see these changes
3 not as a problem, but as an opportunity; a signal from
4 the highest levels of the Ministry that a change
5 oriented leadership now exists, one that recognizes the
6 need for changes to occur in practices and one whose
7 thinking regarding the necessary future direction of
8 forestry is similar to the thinking of Forests for
9 Tomorrow and to the evidence and positions that FFT has
10 proposed to you.

11 We will be referring further to these
12 initiatives in our submission, but I wish to underline
13 two examples within them expressed in Direction 90's
14 with which FFT is in complete agreement. Indeed, these
15 are principles that form the basis of our case.

16 The first has to do with sustainability,
17 the need for management in accordance with the goal of
18 sustainable development and the second is the
19 precautionary principle.

20 With regard, first of all, to
21 sustainability - you will recall, Madam Chair, that
22 Direction 90's was filed by the Ministry of the
23 Environment during its evidence - with regard to
24 sustainability I want to refer, first of all, to the
25 message from the Minister within Direction 90's in

1 which he stated that:

2 "The process of developing
3 sustainability will present challenges to
4 us and other resource stakeholders as we
5 move together from rhetoric to real
6 meaning. It will necessitate sometimes
7 difficult decisions that in time will
8 lead to a better definition of
9 sustainable development. Sustainable
10 development is the cornerstone of MNR's
11 new direction."

12 He went on to say in that context:

13 "We want to ensure a productive resource
14 economy that will create more and more
15 lasting jobs than the kind of economy
16 that our natural resources have supported
17 in the past."

18 And he defined what he meant by
19 sustainable development. This is in the body of the
20 material.

21 "A better way to get at what it really
22 means to an agency such as MNR is to
23 think about developing sustainability.
24 This way we are confronted with the
25 challenge of a process rather than a

1 thing and our task becomes better defined
2 in the process. Sustainability means
3 that decisions about development must be
4 based on a careful consideration of all
5 factors, both short and long term. It
6 assumes a comprehensive assessment on
7 environmental, social and economic
8 effects and their relevance from a local,
9 regional, national and even international
10 perspective. The Ministry will continue
11 to contribute to the economic development
12 and social well-being of the province,
13 but on the basis of sustainability of the
14 resources and the associated natural
15 processes.

16 "With respect to renewable resources,
17 sustainable development implies not only
18 that resources are renewed or replaced,
19 but that their use does not undermine the
20 sustainability of related resources and
21 ecological processes. We must keep in
22 mind our first principle that all life is
23 connected."

24 In the message from the Deputy Minister
25 included in Direction 90's he referred to sustainable

1 development:

2 "Thus, this goal places an onus on us
3 as never before to manage for
4 sustainability, to demonstrate that
5 sustainability is achievable and to be
6 accountable for progress towards it."

7 In our submission, Madam Chair, Mr.

8 Martel, this hearing is exactly about accountability of
9 the Ministry for sustainability of the resource.

10 Finally, I would like to refer to the
11 sections of Direction 90's that discuss the
12 precautionary principle. It is at page 7 of the
13 document and part of it reads as follows:

14 "The development of our natural
15 resources has, by definition, limits.
16 These limits are defined by the finite
17 capacity of our lands and waters.
18 Anticipating and preventing negative
19 environmental impacts before undertaking
20 new activities is less costly and more
21 effective than correcting or curing
22 environmental problems. Our
23 understanding of the way the natural
24 world works and how our actions affect it
25 is often incomplete.

1 "This means that we exercise caution
2 and special concern for natural values in
3 the face of such uncertainty and respect
4 the precautionary principle."

5 We would summarize the precautionary
6 principle using those words and add as well "do the
7 least harm."

8 Now, we take the Minister at his word
9 that this document is not merely a Ministry's puff
10 piece, but a sincere message to change directions.

11 It is the position of Forests for
12 Tomorrow that should the Board accept the positions of
13 this case, exemplified by the MNR case managers and the
14 OFIA, the resulting entrenchment of the status quo of
15 timber management will effectively frustrate the change
16 oriented direction expressed by the Minister.

17 The MNR position in the case and the OFIA
18 position are not based on sustainable development and
19 will not achieve it, neither with respect to wood
20 supply nor for non-timber values, nor are these
21 positions based on the precautionary principle. As Ms.
22 Cronk said with respect to one issue, if it is not
23 broke don't fix it.

24 FFT and the precautionary principle says
25 make sure it doesn't get broken, take steps in advance

1 and if there is any doubt take steps to prevent harm.

2 Forests for Tomorrow's proposals are
3 presented for those purposes, to ensure that the level
4 of environmental protection required by the purpose of
5 the Environmental Protection Act and its broad
6 definition of environment through management for
7 sustainable development based on the precautionary
8 principle will be the approach to managing forests in
9 Ontario. My reference should have been to the
10 Environmental Assessment Act, Madam Chair.

11 Now, I will just provide with you a brief
12 outline of how our argument is to proceed over the next
13 couple of days if, in fact, it requires two days.

14 I am going to make some submissions now
15 with regard to the subject of witness reliability and
16 then Mr. Lindgren will address you with regard to the
17 law of environmental assessment and land use planning.

18 We will then deal in some detail with
19 environmental effects which I will outline more
20 specifically at that time. That will include access,
21 economics, pesticides, the activities, wood supply
22 sustainability, silvicultural prescriptions,
23 biodiversity management.

24 Mr. Lindgren will later address you with
25 regard to the planning process and continuing

1 developments and I will conclude with submissions
2 regarding integrated management.

3 With regard to witness reliability and
4 credibility, Madam Chair, Mr. Martel, submissions have
5 been made by both the Ministry and the Industry that,
6 and I believe both orally and in writing, the witnesses
7 presented by them have greater expertise and should be
8 relied upon you in making this decision and that the
9 witnesses presented to you by Forests for Tomorrow do
10 not have such equivalent expertise.

11 I want to review for a moment the
12 expertise of those of our witnesses who contributed
13 before you to the development of FFT's proposals with
14 regard to silviculture specifically.

15 First of all, Dr. Hutchinson, who is a
16 much published, recognized eminent scientist, a member
17 of the Royal Society who has performed and continues to
18 perform basic scientific research in both the boreal
19 and Great Lakes Forests of Ontario.

20 With respect to ecosystem dynamics and
21 environmental effects he has expertise and
22 qualifications, I respectfully submit, far exceeding
23 those of Mr. Greenwood who testified to these issues
24 for the Ministry.

25 Mr. Benson is a professional forester,

1 previously a Ministry employee, a teacher of forest
2 management to new graduates, many of whom then work for
3 either the Ministry or the Industry. He also continues
4 to practise into forestry privately as a consultant to
5 private clients. He was qualified as an expert in
6 forest resource management and forest resources
7 management planning.

8 In our submission this must, contrary to
9 suggestions to the contrary, constitute expertise in
10 the activities - access, harvest, renewal and tending -
11 since forest management or timber management have been
12 defined and accepted by all parties to include those
13 four activities.

14 In addition, he performed for you what no
15 one from the Ministry or the Industry did and that is
16 an examination of the actual environmental effects of
17 forestry which we will discuss later.

18 Now, Mr. Marek was acknowledged by both
19 the Ministry and the Industry as a regeneration pioneer
20 in Ontario, and you will recall the picture of the rock
21 and the small child in MNR witness statement, I
22 believe, 2, one of the first regeneration efforts in
23 Ontario and, of course, the small child near the rock
24 was Mr. Marek's son, now an adult. He worked for the
25 Ministry for about 30 years practising forestry and he

1 continues to practise as a private consultant and to
2 monitor the plantations he has managed since the 1960s.

3 To our knowledge this was the largest
4 conifer plantation reported to you for which results
5 are much more than five year stocking results or even
6 free to grow results, and the evidence he presented to
7 you with regard to the Clay Belt is very concrete. He
8 gave you photos of actual problems.

9 We wonder if he had testified prior to
10 retiring from the Ministry, although not from forestry,
11 whether the same denegration of his expertise would
12 have occurred.

13 In our submission it is not reasonable
14 for the Ministry or the Industry to ask you to accept
15 as experts witnesses with many years less experience
16 than he in these matters, but to reject his.

17 In our submission the most important
18 element differentiating the evidence of the Ministry
19 and the Industry from Messrs. Marek and Benson is that
20 Marek and Benson brought the Board evidence of actual
21 effects, not only theories of management but photos and
22 analysis of actual plans, admissions of good practices
23 and effects as well as examples of poor ones.

24 In our submission that type of balance
25 was missing in the Industry and MNR presentations where

1 we found a lack of willingness to accept and admit
2 problems.

3 We suggest that this balance reflects
4 well on their credibility as witnesses and provides an
5 additional basis for the Board to confidently rely on
6 their evidence.

7 In fact, it is the view of Forests for
8 Tomorrow the attacks on their credibility exemplify
9 what's wrong with the Industry and Ministry approach to
10 timber management in Ontario and that is the lack of
11 willingness to consider other approaches and to take
12 seriously the criticism of their practice and to
13 examine alternatives instead of listening to the
14 message, the attempt was made to shoot the messenger,
15 their knowledge and their good faith.

16 We see it as similar to the approach to
17 logging. There is only one basic way to do it,
18 clearcut large areas.

19 Similarly, there is only one sort of
20 knowledge of forest practices it would appear, that of
21 the Industry and the Ministry.

22 In our submission if the Board were to
23 accept those submissions other experts who have
24 contributed to this hearing would also need to be
25 discounted.

1 Dr. Baskerville, for example, is not a
2 practising forester in the field nor, for that matter,
3 is Mr. Armson, nor has he been for some time.

4 Dr. Methvan is a teacher like Crandall
5 Benson. Professors Welsh and Thompson do not practise
6 forestry in the field, nor does Professor Carlton.

7 In summary, to dismiss the evidence of
8 those other than the Ministry and the Industry leads to
9 the absurd result, Madam Chair, Mr. Martel, that no one
10 else can contribute to this hearing.

11 How far down the line does it go? Do we
12 exclude all the union leaders who presented evidence to
13 you as well?

14 Madam Chair, Mr. Martel, the alternative
15 approaches to which Forests for Tomorrow witnesses
16 testified are not new. They have been in the
17 literature and they have been utilized in various
18 jurisdictions for decades.

19 In our submission, if the Ministry and
20 the Industry had paid attention to them and focused the
21 hearing on an examination of environmental effects and
22 alternative methods, even while defending their own
23 approach, we would have had a much shorter and well
24 scoped hearing from the beginning.

25 Instead, they ignored the evidence of

1 other approaches, did not refer you to it, led
2 extensive evidence of the status quo and now seek to
3 discredit those who provided you with information on
4 the full range of alternatives available. We find this
5 an offensive strategy.

6 Most important, it is clear that the
7 Ministry's case manager's view on this question and the
8 Industry view is not shared by the current Minister of
9 Natural Resources or senior managers, such as Dr.
10 Balsillie who testified before you.

11 In our submission - and we will return to
12 this - again, the sustainable forestry initiatives are
13 based on taking seriously the possibility and the need
14 for new approaches to forestry consistent with those
15 proposed by our experts.

16 Mr. Lindgren will now address you with
17 regard to environmental assessment.

18 MR. LINDGREN: Good morning, Madam Chair
19 and Mr. Martel.

20 We have prepared what we have called EA
21 submissions and these submissions have been organized
22 into four main categories. They are description of the
23 undertaking, the Class EA approach, need and the null
24 alternative, and land use planning.

25 So that's the road map that I intend to

1 follow this morning as I go through these submissions
2 and, Madam Chair, under each of these categories we do
3 have a fair number of detailed submissions and as I go
4 through them it is our intention to summarize FFT's
5 written argument. It is also our intention to respond
6 to some of the major points raised on these issues by
7 Ms. Cronk and Mr. Freidin.

8 I should also tell you that the FFT
9 position on these issues have been summarized in
10 paragraphs 1 to 4 in the summary of final argument that
11 we provided to you this morning. You might consider
12 this summary as the Cole's notes to FFT's written
13 argument.

14 Now, the first major category of
15 submissions I would like to review with you have been
16 organized under the heading Description of the
17 Undertaking.

18 Now, this is a fundamentally important
19 issue, Madam Chair and Mr. Martel, and it is an issue
20 that has been dealt with at various locations of the
21 FFT written argument, but the primary argument on
22 behalf of FFT is found at pages 4 to 8 of Volume 1 of
23 the FFT argument.

24 Now, this is an important issue, Madam
25 Chair and Mr. Martel, because the nature of the

1 undertaking will affect in a profound way what the
2 alternatives to are and what the alternative methods
3 are and that's why Mr. Freidin and Ms. Cronk spent some
4 time dealing with this issue with you and that is why I
5 propose to spend some time with you on this issue as
6 well. It is fundamentally important and a lot of
7 things will flow from the Board's ruling on this issue.

8 Now, the FFT argument relating to the
9 nature of the undertaking essentially boils down to
10 three main propositions.

11 The first is that the undertaking is the
12 planning process respecting the activities of access,
13 harvest, renewal and maintenance.

14 The second main proposition is that since
15 the undertaking is planning, then an alternative method
16 of planning the four activities which meets the purpose
17 of the undertaking can be approved by the Board.

18 The third main proposition is, the law
19 is clear that this Board can approve an alternative
20 method of planning that is not preferred by the MNR or
21 that was not even considered by the MNR.

22 Those are the three main propositions we
23 urge the Board to accept in relation to the nature of
24 the undertaking and what I would like to do right now
25 is discuss each of those propositions in a little more

1 detail, and as I do so I will be responding directly to
2 some of the submissions you have heard from the
3 Industry and from the Ministry of Natural Resources
4 last week.

5 If I could start with the first
6 proposition, the undertaking is the planning process,
7 FFT makes a number of submissions in relation to that
8 proposition.

9 Firstly, the Class EA itself extensively
10 and repeatedly refers to that planning process
11 described within the EA. Now, these references are
12 scattered throughout Exhibit 4, the Class EA Document,
13 and this is indicated at pages 4 to 5 in our argument
14 and, in fact, we have reproduced many of the sections
15 of the Class EA which deal with planning at that
16 portion of our argument.

17 I don't propose to review those
18 references with you, Madam Chair. My point today is
19 simply that the authors of the Class EA clearly
20 recognize that the document entails a planning process.

21 However, at page 4 of the MNR written
22 argument the Ministry still claims, still maintains
23 that the undertaking before the Board in this hearing
24 is timber management comprised of the four activities.

25 Madam Chair, Mr. Martel, this submission

1 by the Ministry flies in the face of the Class EA
2 itself and the months and months of planning evidence
3 called by the MNR itself and I say to you it is a
4 little late in the day for the MNR to ignore the Class
5 EA, ignore its own evidence and claim now that the
6 undertaking is only the four activities and nothing but
7 the four activities.

8 The next submission is this, Madam Chair.
9 The Class EA approach has evolved in this province to
10 establish common planning processes, common planning
11 processes for certain classes of activities which recur
12 frequently, which are small scale and which have
13 generally predictable and limited environmental
14 effects.

15 Now, this proposition has been recognized
16 by the Ministry of the Environment in a variety of
17 places in the evidence. I am referring specifically
18 to, for example, Exhibit 994 which are the MOE
19 guidelines for the preparation of environmental
20 assessment documents and if you review that document
21 you will see a discussion of Class EAs at pages 16 to
22 18.

23 I would also refer you to Exhibit 995
24 which is an issue of the EA update and, again, that
25 deals with the issue of Class EAs at pages 7 and 15.

1 The summary of the Class EA approach that
2 I just gave to you was put to Mr. Bisschop during my
3 cross-examination of him during MNR reply evidence and
4 he agreed with it, he agreed that that is what Class
5 EAs have been in this province. That reference is
6 Volume 334 pagems 67,866 to -67.

7 Now, I am going to be discussing this
8 matter in a little more detail when I talk about Class
9 EAs, but the point to be made here is that the MNR's
10 insistence that the undertaking here is only the four
11 activities and not the planning process, that position
12 is contrary to the concept and practice of Class EAs in
13 this province and, as I mentioned, I will be returning
14 to that submission in a few moments, but I wanted to
15 lay it on the table right now.

16 The third submission I would like to make
17 is that the Board itself has previously and properly
18 ruled that the planning process is or includes the
19 planning process -- sorry I should rephrase that, has
20 ruled that the undertaking is or includes the planning
21 process.

22 If you have a sense of deja vu as I make
23 these submissions that's because you have in fact heard
24 them before. This issue was raised by the Board and by
25 the parties and it was fully argued some time ago.

1 Now, my submissions on this issue are
2 found at Volume 170, page 30,203 and Volume 173, page
3 30,770. I am not going to repeat those submissions,
4 but that's where the Board can look if they care to
5 obtain further clarification or further information
6 about the submissions that I am making to you today.
7 I dealt with the issue much more extensively two and a
8 half years ago and I am not going to repeat those
9 submissions, but that's where they are in the
10 transcript.

11 Now, after the Board heard the
12 submissions from FFT and all the parties it ruled on
13 this very issue and that's the ruling dated January
14 17th, 1990 and, in our view, the Board clearly
15 recognized that the undertaking is the planning
16 process.

17 There is only one paragraph from that
18 decision I would like to emphasize and draw to your
19 attention and this is found at page 7 of the written
20 argument that has been submitted by FFT, paragraph 11,
21 and we quote:

22 "Where the Board finds that after
23 carefully considering the submissions
24 made by all of the parties on this issue
25 has concluded that, on the basis of the

1 specific facts outlined in both the
2 documentary and oral evidence presented
3 in the hearing to date the undertaking
4 before the Board should be properly
5 defined or characterized as a timber
6 management proposal, plan or program in
7 respect of the activities of access,
8 harvest, renewal and maintenance and
9 hereby makes a finding to go that
10 effect."

11 That position and that finding, Madam
12 Chair, was reiterated by the Board a month later in
13 respect of the motion relating to the purpose of the
14 undertaking and, again, is reproduced at page 7 of the
15 FFT argument. The Board ruled that:

16 "In its recent ruling of January 17th,
17 1990 the Board clarified its
18 understanding that the definition of the
19 undertaking is a planning process
20 comprising the four activities of timber
21 management."

22 Again, that's why we say to you, Madam
23 Chair, that the MNR's insistence that the undertaking
24 is only the four activities, that submission flies in
25 the face of the Board's previous ruling on this very

1 issue.

2 As I mentioned, it flies in the face of
3 the evidence, it flies in the face of the Class EA, it
4 flies in the face of the Class EA approach in general
5 and it also is inconsistent with the Board's previous
6 ruling.

7 Now, at page 7 of the MNR argument the
8 MNR now claims it agrees with the Board's previous
9 ruling. This is found in the middle of the page where
10 we see the statement:

11 "As stated by Mr. Bisschop during MNR's
12 Reply Panel 4 evidence MNR agrees with
13 this finding by the Board."

14 It is interesting, Madam Chair, because
15 on the very next page the MNR seems to disagree with
16 the Board's ruling. This is at page 8 of the MNR
17 argument. In the second full paragraph of that page we
18 see that:

19 "The Board's comment that the
20 undertaking is properly described as a
21 timber management planning process in
22 respect of the four named activities is
23 based on the assumptions that a class of
24 undertakings must be described as a
25 program, plan or proposal and that the

1 program, plan or proposal in relation to
2 timber management is the timber
3 management planning process."

4 MNR goes on to say and agrees that the
5 undertaking could be described as a provincial program
6 of activities but the MNR specifically goes on to say:

7 "With respect to the second submission
8 MNR respectfully disagrees. MNR continues
9 to disagree that the undertaking is the
10 planning process."

11 Therefore, Madam Chair, the MNR is
12 clearly asking you to reconsider this important matter
13 at this late stage.

14 As as matter of law it is open to the
15 Board to revisit this previous ruling, but FFT urges
16 you not to change the previous ruling for three main
17 reasons.

18 Firstly, as I have already indicated to
19 you, this issue has already been fully heard, fully
20 argued and properly decided by the Board and the MNR
21 has brought forward no new facts, no law, no reasons
22 justifying reconsideration of this matter at this time.

23 Secondly, Madam Chair and Mr. Martel, the
24 the MNR submissions in its argument that I have just
25 put to you are inconsistent with the Class EA and the

1 months of evidence that we have already heard and the
2 Board recognized this in its January 17th ruling.

3 Thirdly, FFT and other parties who framed
4 their cases on the basis of the Board's ruling will be
5 prejudiced if the nature of undertaking is
6 fundamentally redefined after the end of the hearing
7 and at the conclusion of the evidence.

8 I will just expand on that one for a
9 moment. The Class EA itself said the undertaking is
10 planning. The MNR presented planning evidence, the
11 Board ruled that the undertaking is planning;
12 therefore, FFT presented planning evidence. FFT
13 presented an alternative method of planning the four
14 activities and FFT did so on the basis of the Board's
15 previous ruling.

16 To go back now and rule that the
17 undertaking is not planning will seriously prejudice
18 FFT and other parties who properly understood the
19 undertaking to be planning and who presented evidence
20 on that very issue. That is the practical consequences
21 of accepting the MNR's proposals on this point and that
22 is one of the reasons why we urge you to reject them.

23 Before I leave this issue, I want to
24 respond specifically to two submissions that Mr.
25 Freidin made.

1 Firstly, my notes indicate that he said
2 that in its ruling the Board added planning to the four
3 activities. He said the Board added planning to the
4 activities. FFT strongly disagrees with that
5 submission. The Board added nothing. The Board merely
6 recognized that the undertaking is the planning process
7 and it recognized this over the objections of the MNR.

8 Indeed, Madam Chair and Mr. Martel, if
9 the Board added anything it added considerable clarity
10 to this otherwise confusing issue.

11 The second comment that Mr. Freidin made
12 was this. He referred the Board to Volume 162 of the
13 transcript where the former Chair made some comments
14 that the four activities were up for approval in this
15 hearing.

16 FFT submits nothing really turns on those
17 comments, Madam Chair, because they occurred on
18 November 28th, 1989, some two and a half months before
19 the Board issued a formal ruling to the contrary on
20 this very issue.

21 So we, therefore, submit that the
22 comments made by the former Chair do not determine the
23 issue at all and, in fact, those comments have been
24 superseded by the Board's ruling.

25 Madam Chair, that is all I propose to say

1 on our first submission; that is, the undertaking is
2 planning.

3 I would like to now move to the second
4 main submission and that is, since the undertaking is
5 planning, then an alternative method of planning the
6 four activities which can meet the purpose of the
7 undertaking can be approved by the Board.

8 Now, Mr. Freidin has told you that if
9 planning is part of the undertaking, then the Board
10 cannot approve a planning process which goes beyond the
11 four activities and Mr. Freidin also told you that if
12 you go beyond the four activities then you have
13 essentially got a different undertaking with a
14 different purpose.

15 To illustrate that point Mr. Freidin
16 referred specifically to FFT and claimed incorrectly
17 that FFT wants a different undertaking that would meet
18 a different purpose.

19 We have heard similar comments from Ms.
20 Cronk and she noted in her closing remarks last week
21 that this is a timber management hearing. Those were
22 her direct words, "this is a timber management
23 hearing."

24 With respect, Madam Chair and Mr. Martel,
25 this is not a timber management hearing. It is an

1 environmental assessment hearing and this is a
2 significant distinction and it is one that appears to
3 have been overlooked or disregarded by Mr. Freidin and
4 Ms. Cronk. I will explain those comments in a moment.

5 At this time I want to assure the Board
6 that FFT is not seeking a different undertaking that
7 meets a different purpose.

8 Instead, FFT is asking the Board to
9 approve an alternative method of planning which not
10 only meets the purpose of the undertaking, but which
11 also meets the requirements of the Environmental
12 Assessment Act.

13 If the object or intention of this whole
14 exercise is to only meet the purpose of the
15 undertaking; that is to supply a continuous and
16 predictable flow of wood to industry, then any old
17 stripped down, bare bones planning process will do
18 provided it gets wood to the mill, if that's all there
19 is to it, but that's not the end of the matter, Madam
20 Chair.

21 The approved planning process must not
22 only meet the stated purpose of the undertaking, it has
23 also got to meet the requirements of the Environmental
24 Assessment Act. I can't overemphasize that point
25 enough and I am going to be coming back to it in a

1 couple of different portions of the argument.

2 If this means, Madam Chair and Mr.
3 Martel, that the approved planning process must meet,
4 for example, the public interest test in Section 2 of
5 the Environmental Assessment Act - and I will be
6 explaining that one in a moment - it also means, for
7 example, that the approved planning process must meet
8 the requirements of Section 5(3) of the Environmental
9 Assessment Act.

10 So a myopic focus on the stated purpose
11 of the undertaking misses the whole point of this whole
12 environmental assessment exercise, Madam Chair and Mr.
13 Martel. The Board is here to ensure that timber
14 management activities are planned and carried out in an
15 environmentally sound manner. That's our general
16 position on this issue.

17 I would now like to turn to three
18 specific submissions that we put forward for your
19 consideration. The first is that FFT's proposals do
20 not contemplate a different purpose from that stated in
21 the Class EA. FFT agrees that it is the Proponent's
22 prerogative to state the purpose of the undertaking and
23 here the purpose of undertaking has been stated as a
24 continuous and predictable supply of wood to industry.

25 FFT recognizes that industry needs wood

1 and we are not here to change the purpose of the
2 undertaking.

3 However, Madam Chair and Mr. Martel, it
4 must be noted that there are no volumes specified
5 within this stated purpose. It simply says the MNR is
6 to ensure a steady supply of wood to industry at some
7 unspecified level. Therefore, any alternative method
8 of planning the four activities which meets this
9 purpose which produces a continuous and predictable
10 supply of wood at some unspecified level, that is
11 sufficient and that can be approved by the Board.

12 In fact, let's take an extreme example.
13 Suppose we have an extremely restrictive planning
14 process which produces a single cubic metre of wood to
15 industry each year. Now, a single metre of wood to
16 industry each year is continuous, it is predictable and
17 on its face that's enough to meet the stated purpose of
18 the undertaking.

19 Now, this is an exaggerated or extreme
20 example. We fully recognize that industry needs more
21 than a single cubic metre of wood per year, but the
22 point is simply this, an alternative planning process
23 which can ensure a continuous and predictable supply of
24 wood can be approved by the Board and, as Ms.
25 Swenarchuk and I will describe later today and perhaps

1 tomorrow as well, FFT's proposals will produce a
2 continuous and predictable supply of wood to the
3 Ontario Forest Products Industry.

4 Ms. Swenarchuk will, for example, refer
5 you to FFT's proposals respecting maximum sustainable
6 harvest, silvicultural guidelines and so forth.

7 It is our position that on the evidence
8 the Board can find and should find that those proposals
9 will supply wood more effectively, more predictably and
10 more continuously than the MNR's proposals or other
11 parties' proposals.

12 My next submission relates to the
13 Environmental Assessment Act, Madam Chair and Mr.
14 Martel. In considering the purpose of the undertaking
15 and the MNR's preferred means of achieving that purpose
16 the Board must have regard for the definition of
17 environment and the Environmental Assessment Act and to
18 the purpose of the Environmental Assessment Act.

19 I would like to perhaps repeat that to
20 emphasize its importance. In considering the purpose
21 of the undertaking and the MNR's preferred means of
22 achieving that purpose the Board must have regard to
23 the definition of environment and must have regard to
24 Section 2 of the Environmental Assessment Act.

25 Now, you have heard from Mr. Freidin and

1 from Ms. Cronk that this hearing is not about parks or
2 parks planning, it is not about the ANSI program, it is
3 not about non-timber programs, policies or objectives
4 in general.

5 It is our submission, Madam Chair and Mr.
6 Martel, that that position is misleading and incorrect.
7 Parks, ANSIs, bald eagle nests, all manner and sorts of
8 non-timber uses and values are all part of the
9 environment affected by timber management.

10 The Board knows that the Environmental
11 Assessment Act definition of environment is quite
12 broad, and I am not going to read it to you, but the
13 definition certainly includes non-timber values, uses
14 and resources within the area of the undertaking.

15 Therefore, Madam Chair and Mr. Martel, as
16 a matter of law it is open to the Board to impose terms
17 and conditions such as planning conditions or
18 substantive conditions which will ensure that
19 conservation, protection and wise management of the
20 environment including non-timber values in the Province
21 of Ontario.

22 Now, that language, Madam Chair, brings
23 me, of course, to Section 2 of the Environmental
24 Assessment Act. We have now heard four days of legal
25 argument from the Industry and from the Ministry and

1 neither of those parties referred you to the purpose of
2 the Environmental Assessment Act.

3 We have heard a lot about the purpose of
4 the undertaking from Mr. Freidin and Ms. Cronk, but we
5 have heard absolutely nothing about the purpose of the
6 Environmental Assessment Act.

7 The purpose of the Environmental
8 Assessment Act has been stated as follows:

9 "The purpose of this act is the
10 betterment of the people of the whole or
11 any part of the Ontario by providing for
12 the protection, conservation and wise
13 management in Ontario of the
14 environment."

15 As I indicated, the environment is
16 defined broadly and certainly includes non-timber uses,
17 values and resources.

18 In FFT's view, Madam Chair and Mr.
19 Martel, Section 2 clearly creates a public interest
20 test and the significance of this section is this. The
21 Board should only approve a planning process, i.e., a
22 means of carrying out the undertaking that meets
23 Section 2 of the Environmental Assessment Act; that is,
24 the planning process approved by the Board must ensure
25 or should ensure the protection, conservation and wise

1 management of the environment in Ontario.

2 As I have said earlier, this means that
3 not any old planning process will do. You should not
4 approve a planning process which meets the stated
5 purpose of the undertaking, but meets it in a manner
6 that's contrary to the purpose of the Environmental
7 Assessment Act. Instead, the planning process must
8 meet Section 2.

9 As you consider the planning process put
10 forward by the parties you should ask yourself this
11 question: Does the process adequately conserve,
12 protect and wisely manage the environment in Ontario.

13 Now, the practical consequence of this
14 submission is this: Assuming the MNR's proposals can
15 meet the stated purpose of the undertaking - we don't
16 concede it, but let's assume it - that doesn't end the
17 inquiry, it certainly does not determine the matter.
18 The Board must be satisfied that the MNR proposals also
19 meet the purpose of the Environmental Assessment Act;
20 i.e., that the proposals meet the requirement that we
21 protect, conserve and wisely manage the environment.

22 If the Board finds that the MNR's
23 proposals are lacking in this regard, if the Board
24 finds that another party's proposals more effectively
25 protect, conserve or wisely manage the environment,

1 then the Board should impose conditions which go beyond
2 MNR's rather limited terms and conditions.

3 Madam Chair and Mr. Martel, it is our
4 respectful submission that on the evidence it is open
5 to this Board to find that FFT's proposals can more
6 effectively meet the purpose of the undertaking and the
7 purpose of the Environmental Assessment Act.

8 We urge the Board to make this finding
9 particularly since on the evidence it has been
10 demonstrated that MNR's proposals respecting a supply
11 of wood to Industry, those proposals do not and cannot
12 sufficiently protect, conserve and wisely manage the
13 environment. As I have indicated, Ms. Swenarchuk and I
14 will summarize this evidence throughout the remainder
15 of our submissions.

16 The next major submission I would like to
17 make also relates to the planning process. The third
18 submission is FFT's proposed planning process,
19 integrated forest management, is an alternative method
20 of carrying out the undertaking.

21 Now, as I have indicated, the undertaking
22 is the planning process in respect of the four
23 activities. Timber management planning is one method
24 of carrying out the undertaking and obviously timber
25 management planning is the method preferred by the

1 MNR - it is the preferred alternative, in other words -
2 but since the undertaking is planning or the planning
3 process, then integrated forest management planning is
4 another method of carrying out the undertaking which
5 meets the stated purpose of the undertaking.

6 In a nutshell, Madam Chair and Mr.
7 Martel, FFT is offering the Board an alternative method
8 of planning the four activities that can more
9 effectively meet the purpose of the undertaking and the
10 purpose of the Environmental Assessment Act.

11 As we will describe, FFT's proposals will
12 more effectively ensure a continuous and predictable
13 supply of wood and our proposals will result in a more
14 effective protection of non-timber values, uses and
15 features from the effects of access, harvest, renewal
16 and maintenance. In our submission this enhanced
17 protection satisfies the public interest purpose of
18 Section 2 of the Environmental Assessment Act and for
19 that reason we commend FFT's proposals to you.

20 Now, Mr. Freidin has told you that FFT's
21 proposals are not an alternative method. Instead, Mr.
22 Freidin claims that FFT's proposals are an alternative
23 to the undertaking and that the Board, therefore, has
24 no jurisdiction to approve FFT's planning process.

25 First of all, Madam Chair and Mr. Martel,

1 it strikes us as a rather convenient way for the MNR to
2 avoid things it doesn't like. The MNR's approach seems
3 to be: Well, if we call it or label it an alternative
4 to, then we don't have to deal with it, we can ignore
5 it.

6 Madam Chair and Mr. Martel, the MNR can
7 call planning processes whatever it likes, but it can't
8 ignore its evidence, it can't ignore the Environmental
9 Assessment Act.

10 Mr. Freidin went on to say that when
11 planning is part of the undertaking, then alternative
12 planning processes are alternatives to not alternative
13 methods. I think we should stop a moment and think
14 about that submission. Alternative planning processes
15 are alternatives to, not alternative methods.

16 Now, Madam Chair and Mr. Martel, as you
17 know, virtually all of the major intervenors in this
18 hearing have proposed different planning processes.

19 You have heard about the Industry
20 process, you have heard about the FFT process, the OFAH
21 has a process that it wants you to consider, but if Mr.
22 Freidin is right in his submission that alternative
23 planning processes are alternatives to, then the Board
24 has no jurisdiction to approve the Industry planning
25 process, the FFT planning process or the OFAH planning

1 process. I guess we have all spun our wheels for the
2 past four and a half years, we have wasted our time and
3 your time for daring to propose planning processes
4 which differ from that of the MNR.

5 FFT does not accept that line of argument
6 and we submit that the Board should reject that line of
7 argument for several reasons.

8 First of all, the MNR's position is
9 logically inconsistent. I don't think I can put it
10 anymore plainly than that. If the undertaking is
11 planning, as the Board has ruled, then different
12 planning processes are alternative methods of carrying
13 out the undertaking. It is as simple as that. If the
14 undertaking is planning, then the Board has the
15 authority and jurisdiction to prove an alternative
16 method of planning and that alternative method of
17 planning can be different from the MNR's preferred
18 version. The law is very clear on that. That's the
19 Ontario Hydro case and I will be discussing that in a
20 few moments.

21 Our second response is that Mr. Freidin
22 provided no cogent reasoning or analysis which
23 supported the MNR view that alternative planning
24 processes are alternatives to.

25 In addition, Mr. Freidin did not refer

1 the Board to any provision in the Environmental
2 Assessment Act which supports his view and the reason
3 for that, Madam Chair, is simple, there is nothing in
4 the Environmental Assessment Act which supports his
5 view in this matter.

6 Now, Mr. Freidin did offer you an analogy
7 which I guess was intended to support his conclusion on
8 the issue of alternatives to. The Board will recall
9 that Mr. Freidin said something along the lines of
10 suppose Ms. Swenarchuk wants to fly to Sudbury. If
11 that is her purpose, then she can fly directly to
12 Sudbury and that's certainly one way of getting to
13 Sudbury, it is certainly one of many alternative ways
14 or methods of getting to Sudbury.

15 Mr. Freidin went on to suggest that if
16 Ms. Swenarchuk went around the world to get to Sudbury
17 that's a different undertaking with a different
18 purpose.

19 Madam Chair, that's not a different
20 undertaking at all. If Ms. Swenarchuk is going around
21 the world to get to Sudbury, she is still getting to
22 Sudbury, albeit by way of a different method. She is
23 still achieving her stated purpose, she is getting to
24 Sudbury. She is just getting there via an alternative
25 method.

1 Now, this is probably not the best
2 analogy, Madam Chair and Mr. Martel, since we all know
3 that all roads lead to Sudbury anyways, the point is
4 the MNR has confused alternative methods and
5 alternatives to.

6 I think we should leave the analogies and
7 turn to the Joint Board decisions which deal with this
8 issue. One of these decisions has been referenced in
9 the MNR submissions at page 8 and this is the North
10 Simcoe Waste Management Association Decision. It is a
11 decision of the Joint Board dated November 17th, 1989
12 and the MNR has reproduced at page 8 a small extract
13 from that case.

14 The other case I would draw the Board's
15 attention to is the Petro-Sun SNC decision which had to
16 do with an energy from waste facility and that's
17 another Joint Board decision dated October 24, 1988.

18 Now, both of those cases, Madam Chair,
19 say and properly say that you have to take a functional
20 approach to the question of alternatives to and
21 alternative methods.

22 As you will see on page 8 of the MNR
23 argument, the Joint Board in the North Simcoe case said
24 that alternative methods are essentially methods of
25 meeting the purpose of the undertaking which are

1 functionally the same. On the other hand, alternatives
2 to are ways of meeting the purpose of the undertaking
3 which are functionally different.

4 Now, that test in and of itself doesn't
5 add very much, so I would like to use that test and
6 apply a couple of examples to illustrate how it works.

7 Let's suppose for the moment that we had
8 an undertaking whose purpose was defined as building a
9 landfill to dispose of a certain amount of garbage.
10 The alternative methods of carrying out that
11 undertaking are functionally the same; alternative
12 sites, alternative landfilling techniques such as
13 putting in a clay liner, putting in a leachate
14 collection system, those kind of things.

15 The alternatives to are things which are
16 different; exporting the garbage, burning it,
17 undertaking a three R program. So that is one example
18 of how the functional tests could be applied.

19 Another example is this: Suppose the
20 purpose of an undertaking was defined more broadly as
21 generating electrical powers sufficient to meet
22 Ontario's demand. If that's the stated purpose, then
23 alternative methods include nuclear power plants,
24 hydro-electric plants, energy from waste facilities and
25 so forth. Alternatives to are different things that

1 might get at the same purpose; i.e., energy
2 conservation or energy efficiency programs.

3 Now, this leads me to the purpose of this
4 undertaking, the Class EA for timber management. As we
5 have heard, the purpose has been defined as ensuring a
6 continuous and predictable supply of wood to Ontario's
7 forest products industry.

8 It is referred in MNR Panel 17 evidence
9 that the alternatives to include importing wood or
10 recycling wood or wood products.

11 In our submission alternative methods are
12 various forms of planning and permitting the activities
13 of access, harvest, renewal and maintenance. Their
14 management planning is a method, enhanced planning is a
15 method doing that, integrated forest management
16 planning is a method of doing that and all the
17 combinations, permutations in between are all different
18 ways of organizing or planning the four activities on
19 the land base.

20 Now, these alternative methods that I
21 have referred to are different in their content
22 requirement, but they are functionally the same in the
23 sense that they all involve planning the four
24 activities in ways that attempt to meet the purpose of
25 the undertaking.

1 I would go on to add that FFT's proposals
2 are also designed to meet the purpose of the
3 Environmental Assessment Act.

4 That is the reason why we say it is open
5 to the Board to approve a planning methodology which
6 satisfies the purpose of the undertaking and the
7 purpose of the Environmental Assessment Act and, as I
8 have indicated, FFT's planning process on the evidence
9 meets that dual test.

10 For these reasons, Madam Chair and Mr.
11 Martel, we submit that it is incorrect and
12 inappropriate for the MNR to mischaracterize FFT's
13 proposals as alternative to.

14 In fact, we submit that it is somewhat
15 dangerous for the MNR to call alternative planning
16 methods alternatives to because if the Board finds that
17 one of those so-called alternatives to is
18 environmentally superior to the MNR proposal, then the
19 Board should reject the Class EA, refuse to grant
20 approval to proceed on the grounds that the preferred
21 alternative cannot be justified there as an alternative
22 to that's better.

23 Of course, MNR doesn't want that to
24 happen, FFT doesn't want that to happen and that is why
25 we urge the Board to find that FFT's planning process

1 is an alternative method and should be considered as
2 such by the Board.

3 Now, my final proposition in relation to
4 the nature of the undertaking has to do with what this
5 Board can approve. I mentioned the Ontario Hydro case
6 earlier. Our proposition is this, it is based on law:
7 This Board has the jurisdiction to approve an
8 alternative method of planning that is not preferred by
9 the MNR and that was not even considered by the MNR.

10 This result, Madam Chair, Mr. Martel,
11 follows from the decision of the Ontario Court of
12 Appeal in the Ontario Hydro case. We have talked about
13 that case many times in this hearing. This case and
14 its consequence for this hearing are discussed at pages
15 2 and 3 of FFT's written argument and I don't propose
16 to review those submissions in any detail at this point
17 except to say that the Board can approve an alternative
18 method of planning, it can do so without further public
19 notice.

20 If the Board does choose to approve a
21 method of carrying out the undertaking that was not
22 preferred by the MNR or was not even considered by the
23 MNR, the MNR effectively has two choice and these two
24 choices were enumerated in the Ontario Hydro case.

25 The MNR can accept the approval of the

1 Board as qualified or it decline the approval and
2 abandon the undertaking. That's the MNR's choice if
3 the Board approves an alternative method of planning.

4 Now, Madam Chair, that was all we
5 intended to say on the nature of the undertaking and
6 related issues. I was intending to move on to our next
7 major category which is the Class EA approach.

8 Before I move to that, perhaps I should
9 pause to ask if there are any questions arising from
10 the submissions I made already.

11 MR. MARTEL: Mr. Lindgren, when I read
12 MOE's material it seems to me that they said, and I am
13 putting this question to you, that in fact MNR has met
14 the conditions of the Environmental Assessment Act.

15 I read that some time ago, but that's my
16 recollection of their evidence and what does that do to
17 the position you take that under Section 2, the people
18 who are in fact applying the act, MOE, say the planning
19 process meets that approval and yet you are saying it
20 doesn't?

21 MR. LINDGREN: Well, Mr. Martel, I think
22 you might be referring to the government review
23 document that was prepared.

24 MR. MARTEL: I am talking about their
25 final argument. I think I am correct, and it was some

1 weeks ago that I read it, that in fact the MNR proposal
2 does meet the terms of the Environmental Assessment
3 Act.

4 MS. GILLESPIE: Mr. Martel, I think that
5 our argument would state that MNR's proposal meets the
6 requirements subject to the terms and conditions
7 suggested by MOE.

8 MR. MARTEL: All right. I mean, they are
9 taking a slightly different position. Their Ts and Cs
10 are pretty limited overall.

11 MR. LINDGREN: I am not sure if the
12 Ministry of the Environment would agree with that
13 characterization.

14 I think the ministry, and I can't speak
15 for the Ministry of the Environment, would say that the
16 proposals put forward by the MNR are not satisfactory
17 and that is why they need to impose further terms and
18 conditions and that is the FFT position as well. As
19 drafted and as presented the MNR proposals are
20 deficient and that's why we are urging further
21 conditions be imposed.

22 Now, the second main category of
23 submissions I would like to deal with have been lumped
24 under something I have called the Class EA approach.

25 MADAM CHAIR: Mr. Lindgren, is this a

1 good time for you to break or would you like to finish
2 this matter? It's up to you.

3 MR. LINDGREN: I don't think I am likely
4 to complete before the normal time for the break, so if
5 the Board would wish a break let's take a break.

6 MADAM CHAIR: Thank you. We will be back
7 in 20 minutes.

8 ---Recess at 10:20 a.m.

9 ---On resuming at 10:40 a.m.

10 MADAM CHAIR: Please continue, Mr.
11 Lindgren.

12 MR. LINDGREN: Thank you, Madam Chair and
13 Mr. Martel.

14 I would like to continue by dealing with
15 a number of submissions under the heading The Class EA
16 Approach. Now, this issue has been dealt with at
17 various places in the FFT written argument, but it is
18 summarize at pages 10 to 11 of the FFT argument.

19 Last week, Mr. Martel, you asked: What
20 is the purpose of having a Class EA if you are required
21 to look at need or the null alternative at the project
22 level as some parties have suggested.

23 I would like to answer that question for
24 you, sir, and I would like to answer this question by
25 first putting to you FFT's view of what a Class EA is

1 and what a Class EA is not.

2 A Class EA is not a site-specific
3 individual environmental assessment of specific
4 activities or enterprises within a given area. So that
5 is what a Class EA is not, it is not an individual
6 environmental assessment.

7 A Class Ea is a common planning process
8 for certain classes of activities. As I have indicated
9 earlier this morning, Mr. Bisschop agreed with me that
10 this accurately describes Class EAs in this province.

11 In FFT's view, Class EAs are planning
12 processes which are intended to require proponents to
13 plan future projects in a manner which satisfies the
14 Environmental Assessment Act without any direct or
15 formal input from the Minister of the Environment or
16 the Environmental Assessment Board.

17 Now, besides Mr. Bisschop's evidence,
18 there is other evidence in support of that proposition.
19 I have referred you already to the MOE guidelines in
20 the preparation of the EA documents. That's Exhibit
21 994.

22 I have also referred you to Exhibit 995,
23 the EA update, and I would also ask you to look at the
24 Ministry of the Environment's witness statement at Tab
25 3, page 4 and that's Ms. Dahl's evidence on what a

1 Class EA is all about.

2 If I could I would like to pause for a
3 moment and comment on the role of the Ministry of the
4 Environment and I think this goes to the issue raised
5 by Mr. Martel earlier this morning. In our respectful
6 submission the Ministry of the Environment is a party
7 like any other party in this proceeding and its
8 position and its submissions on any particular issue
9 should be given no more and no less weight than any
10 other party's position or submission.

11 Where there is disagreement between MOE
12 and any other party, whether it is FFT, OFIA or MNR,
13 the Board will have to make a choice. It should not
14 automatically defer to the submissions of the Ministry
15 of the Environment.

16 So, for example, where the Ministry of
17 the Environment says the Board only needs to impose a
18 few more terms and conditions to bring this undertaking
19 into line with the Environmental Assessment Act, FFT
20 disagree with that. We say many more extensive and
21 substantive conditions must be imposed to ensure that
22 we have the best planning process we can have with
23 respect to the four activities.

24 So if there is disagreement there between
25 MOE and FFT the Board will have to make a choice and

1 weigh the submissions.

2 Having said that, we do agree with the
3 MOE on most of the points they have raised and we agree
4 with their description of the Class EA process in
5 general.

6 Based on that evidence, Madam Chair and
7 Mr. Martel, FFT submits that it is open to the Board to
8 make three specific findings in relation to Class EAs.

9 The first I have already given to you but
10 I will give it to you again. Class EAs are planning
11 process which require the proponents to undertake EA
12 style analysis at the project level whenever they are
13 proposing a project or activity which falls within the
14 class caught by the parent Class EA Document.

15 The second finding on Class EAs that we
16 urge the Board to make is this: If a proponent follows
17 a Class EA planning procedure, then the project or
18 activity may commence following the completion of the
19 process without further or formal approval by the
20 Minister of the Environment or the Board.

21 The exception is, of course, where there
22 has been a successful bump-up request, but other than
23 that, if the proponent follows the procedures fully and
24 completely the project can commence without any formal
25 role or approval from the Ministry of the Environment.

1 The third finding is this and perhaps it
2 is the most important finding, Madam Chair and Mr.
3 Martel. Approval of a Class EA document does not, and
4 I repeat does not, cost constitute approval or
5 pre-approval of future projects or activities that fall
6 within the class.

7 Let me put that perhaps another way.
8 Approval of a Class EA document does not mean projects
9 or activities are automatically approved. Approval of
10 a Class EA does not mean that the need for a specific
11 project is a given and that it doesn't have to be
12 demonstrated at the project level. Approval of a Class
13 EA does not mean that need for a specific project does
14 not have to be documented or testified by the proponent
15 at the local level.

16 Now, Madam Chair and Mr. Martel, Ms.
17 Cronk and Mr. Freidin made a number of submissions on
18 that issue and I would like to respond directly to
19 them.

20 First of all, Mr. Freidin told you that
21 the MNR is seeking approval for a class of
22 undertakings, a class of undertakings. FFT submits
23 that the Ministry's submission is legally incorrect
24 and, with all due respect, it reflects a fundamental
25 misconception of what a Class EA is all about.

1 Mr. Freidin tried to be very careful when
2 he was talking about this issue and so did Mr. Bisschop
3 when he was talking about Class EAs during reply
4 evidence. Both of those gentlemen talked about
5 approving classes of undertakings as opposed to
6 approving Class EAs which contain planning processes.

7 However, I did note that Mr. Freidin did
8 slip once or twice in his argument, did he did refer to
9 other approved Class EAs as opposed to activities that
10 are approved under other Class EAs.

11 Madam Chair, Mr. Freidin's slip is
12 neither here nor there, but this is a very important
13 distinction and it is not simply a matter of semantics.

14 In FFT's view it is the Class EA that
15 gets approved, not the activities necessarily that fall
16 within the enumerated class.

17 More specifically, Madam Chair and Mr.
18 Martel, it is the planning process in the Class EA that
19 gets approved and there is no specific pre-approval for
20 any particular project in any particular area.

21 MR. MARTEL: Could I ask you a question
22 then. Why would anyone even seek then the approval if,
23 in fact, each time you start all over again
24 essentially?

25 I mean, what would be the advantage to

1 any proponent of spending four years, four and a half
2 years looking at a proposal and then you go back and
3 each time in a hundred units you start all over? Maybe
4 you can tell me, in your opinion.

5 MR. LINDGREN: Well, that's an issue that
6 I am going to be addressing in a few moments, but I can
7 tell you the short answer right now.

8 The short answer is, this Class EA has
9 never been properly or well suited for that kind of an
10 approach in the first place; secondly, unit level need
11 for any particular project has never been demonstrated
12 in this hearing.

13 So the Class EA approach in general is
14 used by proponents to allow them to plan activities and
15 carry out activities in the future, but they can do it
16 without any kind of formal approval from the minister
17 or the Board. So it is almost a streamlined EA
18 process. You might think of it as a mini EA process.

19 If you follow the EA process outlined in
20 the Class EA, then you don't need to go to the Board,
21 you don't need to go to the Minister of the Environment
22 for approval, like you would have to do if there is an
23 individual environmental assessment. So that's
24 justification for the Class EA approach.

25 Mr. Martel, I will be addressing this in

1 more detail in a few minutes and if you still have some
2 unresolved concerns I would be more than happy to
3 address them then.

4 I could start, Mr. Martel, by
5 illustrating this point by referring to the approved
6 Class EA for access roads to MNR facilities. This has
7 been marked as Exhibit 886 in this hearing.

8 It is an approved Class EA and it is
9 clear that none of the specific road projects caught by
10 the class have been pre-approved. For example, in that
11 Class EA the MNR still must consider and document need
12 at the project level, as is found at page 14 of the
13 document, and in that Class EA the MNR must still
14 consider the null alternative at the project level and
15 that's discussed at page 47 of that document.

16 So, in fact, Mr. Martel and Madam Chair,
17 need and the null alternative still have to be assessed
18 routinely under that Class EA.

19 I would also refer the Board to Exhibit
20 2314A and B. Those were the excerpts from the
21 municipal Class EAs and, again, as I reviewed with Mr.
22 Bisschop during reply evidence those Class EAs also
23 require consideration of the null alternative and a
24 demonstration of need at the project level.

25 I am not going to take you in any detail

1 through those other Class EAs. Our point simply is,
2 the MNR's submission regarding the consequences of this
3 Board's approval is totally at odds with the Class EA
4 approach in this province as reflected by Exhibit 886
5 and other Class EAs that have been put before you.

6 Now, Mr. Freidin did acknowledge that
7 other approved Class EAs do contain EA style planning
8 requirements, but he also said to the Board don't
9 blindly follow other planning processes. I believe
10 that's a direct quote.

11 Madam Chair, that's not what FFT is
12 advocating at all. We are not saying that EA style
13 analysis should be imposed in this planning process
14 simply because it exists in other Class EAs. That is
15 not our position at all.

16 Our reasoning is far more fundamental.
17 EA style analysis should be imposed on the MNR's
18 planning process because it represents sound
19 environmental planning and, more importantly, the
20 Environmental Assessment Act requires it.

21 As I mentioned earlier, in our view the
22 approved planning process must reflect the requirements
23 of Section 5(3) of the Environmental Assessment Act.
24 After all, this is supposed to be an environmental
25 assessment exercise.

1 The MNR cannot pick and choose among
2 Section 5(3) elements and say: Well, we will make them
3 describe environmental effects or some of them, we will
4 allow some public participation but we are not going to
5 require consideration of the null or need at the
6 project level.

7 Madam Chair, environmental assessment is
8 environmental assessment and the Environmental
9 Assessment Act is not a buffet table that you can pick
10 and choose; you can't say we will use some of this and
11 use some of that. If you are going to impose a
12 planning process, we say it must be a planning process
13 that reflects the requirements of Section 5(3).

14 If the Board doesn't require a planning
15 process with the essential requirements of Section
16 5(3), then, in effect, you have not approved a planning
17 process that can be described as EA style analysis.
18 You have not approved a planning process that will
19 properly and fully identify and analyse environmental
20 impacts of future projects at the local level.

21 Madam Chair and Mr. Martel, if that is
22 the ruling of the Board, with the greatest of respect
23 we would suggest that that would be contrary to Section
24 2 of the Environmental Assessment Act and it would not
25 protect, conserve or wisely manage the environment in

1 this province.

2 Mr. Freidin said other Class EAs do
3 require EA style analysis. I think he fully
4 acknowledged that, but he went on to try to persuade
5 the Board that somehow, in some way this Class EA, the
6 timber management Class EA is different in some
7 respects than other Class EAs or activities under other
8 Class EAs.

9 This was put to you, I suggest, as a
10 rather bald assertion, it was unaccompanied by any
11 compelling reasoning or any legal analysis from the
12 MNR. It is as if the MNR is saying our activities are
13 different, trust us.

14 Well, Madam Chair and Mr. Martel, we will
15 be speaking to the trust issue later. At this point I
16 would simply note that in support Mr. Freidin only
17 referred to Mr. Bisschop's unsupported statement that
18 this Class EA or the activities under it or different
19 because the activities are inter-related. We heard
20 that word a few times.

21 Madam Chair, I cross-examined on that
22 very issue and that is to be found at Volume 394, page
23 67,873 to -77. There Mr. Bisschop said that activities
24 in other Class EAs are not inter-related. For example,
25 a municipal road in one municipality like Kenora is not

1 related to a municipal road in another jurisdiction,
2 let's say Tweed.

3 Well, Madam Chair and Mr. Martel, if we
4 are going to deal with this issue at the provincial
5 level that comment also applies to forest access roads.
6 An access road in Kenora is not directly related to an
7 access road in Tweed except in the most general sense,
8 that both of them contributed in some small way to the
9 overall timber management program in this province, but
10 the same can be said of a municipal road, whether here,
11 there or anywhere. There is no direct tie between
12 roads in Kenora and Tweed, but in some small way they
13 do contribute to the overall provincial transportation
14 system or the overall municipal infrastructure system.

15 So let me move on to Mr. Freidin's other
16 suggestion. In reply he will probably tell you: Well,
17 let's leave the provincial level alone, let's go to the
18 local level. Timber management activities are
19 different because they are inter-relate. What you
20 decide to do upfront with access will influence what
21 you can do later on with respect to the other
22 activities.

23 Mr. Freidin might go on to tell you that
24 municipal projects under Class EAs, on the other hand,
25 do not have linkages or inter-relationships like that.

1 Madam Chair, it is our submission that
2 municipal projects caught by Class EAs like roads, like
3 sewers, are related to other projects and activities at
4 the local level. I think this point is fairly clear
5 and I discussed it with Mr. Bisschop in Volume 394.

6 What you do with a sewer, for example,
7 under the sewer Class EA will influence what you can do
8 on the water work under the same Class EA, that in turn
9 will influence what you can do in terms of subdivision
10 development, that in turn will influence what you can
11 do in terms of road development under the Class EA and
12 so forth.

13 The point simply is this, Madam Chair,
14 based on the evidence there is nothing qualitatively or
15 substantially different about timber management
16 activities which make them unique or which sets them
17 apart from other classes of activities subject to other
18 approved Class EAs.

19 Given that the clear practice in this
20 province is to have Class EAs which require EA style
21 analysis at the local level, it is FFT's submission
22 that the MNR has failed to demonstrate any compelling
23 reasons why it should not obliged to require the same
24 kind of EA style analysis at the local level.

25 I would like to spend a few more minutes

1 on the issue of need and the null alternative and this
2 is dealt with at pages 13 to 16 of the FFT argument. I
3 think, Mr. Martel, my submissions here might answer the
4 question you posed earlier.

5 Now, on the issue of need, Mr. Freidin
6 has said that the MNR only deals with need once and
7 once and for all and that's here in this hearing in
8 this Class EA. In Mr. Freidin's view, if the Board
9 grants an approval, then need and the null alternative
10 do not ever have to be assessed at the project level.

11 FFT has a number of responses to that
12 submission from Mr. Freidin. Firstly, we submit that
13 there is no authority and no provision in the
14 Environmental Assessment Act which supports the MNR
15 view and, to the contrary, FFT submits that Section
16 5(3) of the Environmental Assessment Act, if it is
17 going to have any meaning at all, means that the
18 planning process approved by the Board must include the
19 essential elements of EA at the project level and that
20 includes need and the null alternative.

21 This brings me to my second comment.
22 Consideration of need and the null alternative are
23 essential elements of environmental assessment, both in
24 individual environmental assessments and class
25 - environmental assessments and that's why we have said

1 repeatedly that Mr. Freidin's position is contrary to
2 the concept and application of Class EAs in this
3 province. Other Class EAs, as we have seen, do require
4 need and null consideration at the local level.

5 Now, in support of his position, Mr.
6 Freidin referred to the fact that this is the first
7 Class EA to go to a hearing. More specifically, Mr.
8 Freidin referred to the number of parties at this
9 hearing, he refered to the evidence of the
10 environmental effects and so forth and I guess he is
11 suggesting that somehow this all means that need does
12 not have to be assessed at the project level.

13 In FFT's submission, as a matter of law
14 nothing turns on the fact that there has been a hearing
15 in this case. Of course we are grateful that there has
16 been a hearing, it has been a long time coming, some 17
17 years in fact, and we are glad that we finally have the
18 public forum to address these issues.

19 However, the mere fact that a hearing has
20 occurred does not entitle the MNR to put forward a
21 planning process which evades the question of need at
22 the project level.

23 In our submission, Madam Chair and Mr.
24 Martel, it makes no difference if the Board or the
25 minister herself who approves a Class EA, the planning

1 process in the Class EA should contain EA style
2 analysis.

3 Now, both Mr. Freidin and Ms. Cronk
4 referred to the fact that there are over a hundred
5 management units in this province. That's true, but in
6 considering this issue the Board should ask itself the
7 following three questions.

8 Firstly, did the Board hear any unit
9 level or project level evidence on the need for
10 specific activities in specific stands in each of these
11 hundred plus units, and the answer in our view is no,
12 the Board didn't receive any of that evidence at all.

13 Secondly, did the Board hear any unit
14 level or project level evidence on alternatives to and
15 alternative methods respecting specific activities in
16 specific stands in each of the hundred plus units.
17 Again, Madam Chair, the answer is no, the Board didn't
18 hear anything at the project level in this hearing.

19 Thirdly and perhaps most importantly,
20 Madam Chair and Mr. Martel, did the Board hear any unit
21 level or project level evidence on the site specific
22 environmental effects of specific activities on
23 specific stands in each of the hundred plus units in
24 the area of the undertaking. Again, the answer is no.

25 We heard some evidence from FFT on actual

1 environmental effects, but the Proponent did not
2 present evidence of potential or actual effects in each
3 of the hundred management units in this province.

4 I could go on, Madam Chair, but the point
5 is clear and I think it deserves some considerable
6 emphasis. The MNR has presented no project level
7 evidence on need, alternatives, environmental effects
8 or other matters required by Section 5(3) of the
9 Environmental Assessment Act.

10 Now, FFT's proposals will require
11 consideration of need, alternatives and environmental
12 effects at the local level and if the Board accepts the
13 FFT proposals they will be assessed for the first time
14 at the project level. It hasn't been done here and it
15 is only through FFT's proposals that you will ensure
16 that those important matters get assessed at the
17 project level and that is why we say to you there is no
18 duplication here at all. Those project level
19 parameters have not been assessed here.

20 We need to put in place a planning
21 process that ensures they will get assessed, otherwise,
22 Madam Chair, what are we left with? Need, null, the
23 alternatives have not been assessed at the project
24 level in this hearing. Under the MNR and Industry
25 proposals they will not be assessed at the local level

1 either and that leaves FFT wondering, where is it going
2 to happen and the answer is nowhere if you accept the
3 MNR and Industry proposals.

4 Madam Chair, that would, in my respectful
5 submission, turn this hearing into a charade, to use
6 your phrase. This is because if you accept the MNR
7 position you will be giving the MNR effectively carte
8 blanche for all future timber management activities in
9 every stand, in every unit, in every district without
10 every having MNR demonstrate a need for any of these
11 activities at the project level.

12 In our respectful submission, Madam
13 Chair, that is unacceptable and it is contrary to the
14 requirements of the Environmental Assessment Act.

15 Now, this issue, Madam Chair, is dealt
16 with at greater length by Drs. Muller and Morrison in
17 the FFT Panel 7 witness statement. You will find this
18 discussion at pages 98 to 101. Their witness
19 statement has been marked as Exhibit 1690.

20 Their point and my point is simply this,
21 there may well be a provincial purpose which says there
22 should be a continuous and predictable supply of wood.
23 As I have indicated earlier, that doesn't say how much
24 wood should be produced, it also doesn't say where this
25 wood should be coming from.

1 It doesn't say, for example, that every
2 stand in every unit in every district must be accessed,
3 harvested, renewed and maintained. The purpose of the
4 undertaking doesn't even say that each unit or each
5 district should produce a continuous and predictable
6 supply of wood. As long as there is a provincial
7 supply that is continuous and predictable, then the
8 purpose of the undertaking has been satisfied and at
9 that level, at the provincial level it really doesn't
10 matter much where the wood is coming from. It doesn't
11 really matter whether it is coming from this local
12 stand or that local stand.

13 It may matter to mills, of course, at the
14 local level, but that is where the whole issue of need
15 comes in. That is where it needs to be addressed at
16 the local level. That's where the rubber hits the
17 road.

18 In our view, Madam Chair and Mr. Martel,
19 the MNR still needs to demonstrate that a particular
20 road project or a particular stand harvest is necessary
21 to satisfy the provincial purpose.

22 Now, in closing my remarks on this issue,
23 Madam Chair and Mr. Martel, I again would like to refer
24 specifically to some comments made by Mr. Freidin.

25 As I mentioned earlier, Mr. Freidin has

1 said that if the MNR gets an approval from this Board,
2 then it is inconsistent with that approval to require
3 consideration of need at the project level.

4 Madam Chair, that requirement is only
5 inconsistent if you accept that the MNR has, in fact,
6 and in law proven a project level need for every stick
7 of wood, every project that is to be carried out in the
8 future in Ontario. I can't emphasize enough that
9 project level need has not been demonstrated in this
10 hearing.

11 In short, Madam Chair and Mr. Martel,
12 every road, every future harvest, every spraying
13 operation has not been pre-approved or pre-ordained
14 simply by virtue of the Board's approval of a
15 provincial planning process.

16 Now, Mr. Freidin also said it would be
17 inconsistent with the Board approval to require
18 consideration of the null alternative at the project
19 level.

20 In response FFT offers a number of
21 points. Firstly, as I have indicated, consideration of
22 the null is an essential requirement to environmental
23 assessment in this province.

24 Mr. Freidin told you that there is no
25 legal requirement for consideration of the null

1 alternative, but FFT notes that the MNR did not dare
2 produce a Class EA that lack analysis of the null
3 alternative.

4 Clearly, Madam Chair and Mr. Martel, the
5 MNR itself recognizes that the null alternative is an
6 important element of environmental assessment.

7 Our second response is this, the null
8 alternative is a viable option under other approved
9 class environmental assessments. You will see this at
10 page 47 of Exhibit 886 which is the class EA for MNR
11 roads and you will also see it in Exhibit 2314A and B
12 which are the municipal Class EAs.

13 When you read those documents, Madam
14 Chair and Mr. Martel, it is clear that the null
15 alternative is a viable option that remains at every
16 stage of the planning process. So that if during the
17 course of planning it is determined that there is no
18 need for the project or that the environmental effects
19 are ununacceptable you don't go ahead. You embark upon
20 the null alternative.

21 But, again, we are not saying that the
22 Board should require consideration of the null simply
23 because it is required in other Class EAs. We are
24 saying it is a matter of sound environmental planning
25 and that's why the null is required in other Class EAs,

1 that's why it is required in this Class EA at a general
2 provincial level and that is why it should be required
3 at the local level in the planning process.

4 On this point we note that FFT is
5 supported by the position of the Ministry of the
6 Environment and I am referring specifically to the MOE
7 witness statement, Exhibit 2200A, Tab 3, page 8, that's
8 the evidence of Ms. Dahl, that MOE has clearly
9 recognized the value of requiring consideration of the
10 null at the project level.

11 Let me sum up the issue of need and the
12 null alternative and this was the third main category
13 of my submissions.

14 FFT submits that the planning process
15 must require consideration of these issues at the local
16 level or the project level. If they are not required
17 at the local level, if the MNR position is accepted and
18 the need for all projects have been essentially
19 pre-approved, then why even have a planning process?
20 Why would anybody participate?

21 If the position of the MNR in the future
22 is going to be: Well, we don't have to justify the
23 need for this particular project, we are going to build
24 a road, we are going to access a stand and do you know
25 why because something called the Class EA, something

1 you never even heard about or probably participated in
2 said need has been documented at the provincial level
3 so we don't have to look at it now and we are going to
4 go ahead. The best you can do is hope for mitigation
5 in the form of timing or the form of location.

6 That's the essential fall-out of the MNR
7 position. If you don't require consideration of the
8 need, if you don't require consideration of the null
9 alternative, the planning process, in my respectful
10 submission, is window dressing and why would anybody
11 participate. If all of this has been pre-ordained
12 what's the point?

13 Madam Chair, that's an astounding
14 position. I would urge you to reject it.

15 Now, the fourth and final category of
16 comments I have called land use planning. Mr. Freidin
17 and Ms. Cronk have made a number of comments about land
18 use planning and I would like to respond to a number of
19 those comments.

20 First of all, Mr. Freidin and Ms. Cronk
21 claimed that this undertaking is not about land use
22 planning. Mr. Freidin also said timber management
23 planners don't have the authority or direction to make
24 land use planning decisions.

25 Well, FFT finds this to be another

1 astounding submission and we, again, strongly urge the
2 Board to reject it.

3 After all, I think we have to face a few
4 facts. First of all, forestry is a land use. There
5 can be no doubt about that.

6 Secondly, given the intrusive nature of
7 timber management activities, these activities are
8 perhaps some of the most environmentally significant
9 land uses that are carried out in the area of the
10 undertaking.

11 Thirdly, when planning teams decide if,
12 when and where forestry operations are going to occur
13 in the land base that is land use planning, in our
14 respectful submission. So, for example, when planning
15 teams develop selection criteria and apply them to
16 select areas for operations that is land use planning,
17 in our respectful submission.

18 In short, Madam Chair and Mr. Martel,
19 timber management planning is planning how areas of the
20 land base are going to be used. In our view there is
21 no substantive difference between negotiating an AOC
22 around a tourist operation as occurs in the planning
23 process now and doing this and providing more
24 systematic protection through integrated forest
25 management which acknowledges these other potential

1 uses up front rather than treating them as add-on
2 constraints.

3 Now, Mr. Freidin has said that the Board
4 does not have jurisdiction to make land use or land
5 allocation decisions. Now, if Mr. Freidin means that
6 this Board cannot say you can harvest this stand in
7 Kenora, you can't do it over here, he is right and we
8 agree with that and we have said that at pages 22 and
9 32 and 33 of our written argument. We agree that the
10 Board cannot make specific or actual land use
11 decisions.

12 You are not being asked to decide whether
13 or not a particular stand should be accessed,
14 harvested, renewed or maintained, but what the Board
15 can do and is required to do under the Environmental
16 Assessment Act is judge the adequacy of environmental
17 assessment submitted by the MNR, decide whether or not
18 approval to proceed should be given, decide whether or
19 not terms and conditions should be approved or opposed
20 and, more specifically, this means that what the Board
21 can do is approve an EA style planning process.

22 Madam Chair and Mr. Martel, I want to
23 take note of an internal contradiction with MNR
24 submissions on this point. On the one hand the MNR is
25 saying this Board cannot make land use or allocation

1 decisions, but on the other hand the MNR says the
2 Board's approval will effectively approve timber
3 management everywhere in the area of the undertaking,
4 at least in those areas where timber management is at
5 this time a possible use under the District Land Use
6 Guidelines.

7 In our view, Madam Chair and Mr. Martel,
8 that is a land use decision of the highest order. That
9 is land allocation without parallel or precedent.

10 If the Board accepts the MNR position,
11 then the Board will have taken this possible use, this
12 possible use and turned it into an approved or
13 committed use everywhere. The MNR will not have to
14 justify the need for any of this at the local level.

15 Now, Mr. Freidin went on to suggest that
16 where the DLUGs say forestry is a permitted use, it is
17 in fact a designated use, it should not be disturbed by
18 timber management planners because the suggestion is
19 this decision has been made elsewhere, timber
20 management planners simply implement it or are bound by
21 it.

22 If the Board accepts that submission from
23 the MNR, Madam Chair and Mr. Martel, then in our view
24 that will virtually lock up land for timber management
25 even where other uses, such as mining or trapping or

1 Crown land recreation, may be permitted in the same
2 area.

3 Let me explain that submission. Firstly,
4 the MNR seems to be of the view that the word permitted
5 means mandatory or committed. Now, of course we can't
6 find a dictionary that says permitted equals committed
7 and, in fact, we had an opportunity to look at the
8 Concise Oxford dictionary, we looked at the word permit
9 and it simply says to give consent or opportunity,
10 permission is to defined as consent or liberty,
11 permissive is giving permission. Nowhere does it say
12 permitted means locked up. It means it is possible, it
13 means you might do it.

14 If you accept the MNR submission that if
15 the District Land Use Guidelines says it is a permitted
16 use, then by golly it is going to be done and it is a
17 committed use, does that mean that these areas are now
18 off limits to other uses, other permitted uses like
19 mining or tourism or does it mean that those other uses
20 are now subordinate to timber management activities?

21 Madam Chair, I did refer to the
22 dictionary, but this, again, is more than a matter of
23 semantics. It is a fundamentally important issue and
24 the MNR's apparent position certainly indicates to FFT
25 that timber is still king within the MNR.

1 We have certainty not heard in this
2 hearing that any other permitted use should take
3 precedence over timber management. We have certainly
4 never heard that other plans or program or objectives
5 for non-timber values or other non-timber resources are
6 binding on planning teams in the manner that DLUG
7 timber uses are said to be binding on planning teams.
8 That has not happened at all.

9 Now, the suggestion from Mr. Freidin
10 appears to be that since the MNR went through the SLUP
11 and DLUG process over a decade ago land use decisions
12 have been made and they cannot be altered by planning
13 teams.

14 Again, the suggestion seems to be that
15 the land base was carved up and locked up a decade ago
16 and planning teams merely implement these so-called
17 higher order decisions.

18 FFT submits that this suggestion from the
19 MNR should be rejected by Board on the evidence. More
20 specifically, FFT submits that DLUGs are not now nor
21 were they ever a land use planning exercise.

22 More over, that the DLUGs have been
23 largely discredited by several knowledgeable observers.
24 I am referring here to the Royal Commission on the
25 Northern Environment, the Environmental Assessment

1 Advisory Committee, Dr. Payne who testified on behalf
2 of FFT during FFT Panel 4. You will recall that he
3 compared and contrasted DLUGs with other planning
4 exercises and found the DLUGs entirely lacking.

5 So that's why we say the DLUGs have been
6 largely discredited by knowledgeable observers, they
7 have been disrespected by the public and they have been
8 been disregarded by the MNR itself when it is
9 convenient to do so. All of that has been demonstrated
10 on the evidence, Madam Chair.

11 Many of these submissions and references
12 to the evidence are contained throughout the FFT
13 argument. You could look, for example, at page 136 of
14 the FFT argument and that's where we summarize the
15 concerns about the MNR's use or misuse of DLUGs.

16 Now, the concerns, Madam Chair, fall into
17 two general categories; DLUG content and DLUG process.
18 In terms of DLUG content, FFT makes five main
19 submissions on the evidence.

20 Firstly, land use categories in DLUGs are
21 permissive not mandatory. The mere fact that forestry
22 may be a permitted use does not mean that forestry must
23 be carried out anywhere in the land base. The decision
24 as to whether or not forestry is carried out is made by
25 the planning team. As I have mentioned, that is a land

1 use planning decision and it is a critically important
2 one.

3 MR. FREIDIN: Is there specific evidence
4 you are referring to to support that proposition, the
5 proposition that land use categories are permissive
6 and not mandatory?

7 MR. LINDGREN: We will provide the
8 transcript references.

9 Secondly, and this was discussed with Mr.
10 Bisschop during reply evidence and elsewhere as well
11 that DLUGs have no legal status and they have no legal
12 binding requirements. In short, DLUGs are not like
13 municipal zoning by-laws.

14 Thirdly, not all districts have approved
15 DLUGs and, again, that reference is found at page 136
16 of the FFT argument and, again, that's arises out of a
17 discussion I had with Mr. Bisschop.

18 Fourthly, DLUG targets for non-timber
19 values, uses or resources were mere guesstimates, they
20 were not based on inventories, they were not based on
21 the capability of the land base and you heard from Dr.
22 Payne on that issue. There is also a discussion on
23 that issue in the final report of the Royal Commission
24 on the Northern Environment.

25 Fifth, DLUGs are not analogous to the

1 U.S. Forest Service forest plans. Mr. Freidin
2 suggested that they were,, we tell you that they are
3 not and that's based on the evidence.

4 Now, Mr. Freidin quoted Mr. Smith on this
5 issue and the reference was Volume 301, page 53,651 and
6 Mr. Freidin used that reference to support his view
7 that even Mr. Smith agreed that DLUGs are more or less
8 analogous to forest management planning.

9 We have had an opportunity to look at
10 that transcript and that's not what Mr. Zane Smith said
11 at all. He did not say that DLUGs and forest
12 management plans are identical or even similar. What
13 he did say was that of the things he looked at DLUGs
14 are closer to forest management plans. He didn't say
15 they were identical, he didn't say they were similar.

16 There are other reasons to suggest to the
17 Board that the U.S. forest management plans are not
18 analogous to DLUGs.

19 First of all, the Forest Service plans
20 are plans, they are not guidelines; secondly, the
21 forest plans were developed under environmental
22 assessment legislation, the DLUGs were not, as well,
23 according to Mr. Smith, forest management plans are
24 developed with full public participation in every step
25 of the process.

1 Dr. Payne and other commentators have
2 observed that the public consultation process leading
3 up to the DLUGs was questionable at best.

4 That brings me to my DLUG process
5 concerns and there are four main ones. Again, these
6 are set out at page 136 of the argument.

7 The first I have just given you, the
8 public consultation process leading up to the DLUGs was
9 questionable at best and as a result the DLUGs appear
10 to enjoy little public support.

11 Secondly, the DLUGs were not developed
12 under an environmental assessment process and were not
13 subjected to environmental assessment.

14 On that particular point I would direct
15 the Board to the final report of the Royal Commission
16 on the Northern Environment which has been marked as
17 Exhibit 33 in this hearing. I would refer the Board
18 specifically to Chapter 8 and Appendix 14 and you will
19 recall that those portions of the report traces or
20 indicates that the DLUGs started out as plans, but they
21 were then at some point changed to guidelines and it
22 was interpreted that was done so as to avoid EA
23 obligations. That's found loud and clear in Appendix
24 14 of the final report of the Royal Commission.

25 We see yet again, Madam Chair and Mr.

1 Martel, the MNR in this hearing trying to remove land
2 use planning from the ambit of the Environmental
3 Assessment Act, claiming this is somehow beyond the
4 scope of this Board's jurisdiction. As I have said
5 often, that proposition must be rejected by the Board.

6 The third DLUG process concern is this,
7 DLUG effectiveness is limited because they were not
8 developed in the context of overall or integrated
9 forest management.

10 Indeed, as Dr. Payne discussed in his
11 evidence, many FMAs were signed before DLUGs were
12 approved in 1983. This transcript reference is Volume
13 267, pages 48,412.

14 MR. FREIDIN: I'm sorry, 48...

15 MR. LINDGREN: 48,412 to -20.

16 It was Dr. Payne's view that this is
17 certainly a backwards way of going about integrating
18 the process. On the one hand you claiming you have
19 done integrated planning, but you have already
20 previously made allocations to companies.

21 The fourth DLUG process concern is that
22 DLUGs can be changed and indeed have been changed with
23 little or no public notice by the MNR.

24 Now, on this point, and I believe this is
25 an important point, Madam Chair, I would ask the Board

1 to recall the evidence of Mr. Tunnickliffe. Mr.
2 Tunnickliffe was an FFT lay witness. He was the
3 President of the Marceau Lake Cottagers Association and
4 that association had a long running dispute with a
5 company in the area of Marceau Lake.

6 Now, right in the middle of that dispute,
7 and it went on for years, Madam Chair, Mr. Tunnickliffe
8 found out by accident that the MNR had changed the DLUG
9 category of the area in dispute so as to add timber
10 management as a permitted or primary use in the area
11 without public notice or at least without notice to Mr.
12 Tunnickliffe and the Cottagers Association who were
13 involved in this very issue.

14 Madam Chair, the reference there is
15 Exhibit 1433A which is the FFT Panel 2 witness
16 statement, Tab 1, page 14.

17 I would also refer the Board to the
18 evidence of another FFT lay witness, Mr. Mark Robinson.
19 You will recall that Mr. Robinson objected to proposed
20 water crossings over the Mississagi River. It was a
21 poplar canoe route and the MNR was proposing to put
22 access roads or bridges over this particular route.

23 One of the grounds that Mr. Robinson
24 relied upon in opposing the bridges was that the bridge
25 was contrary to the provisions of the District Land Use

1 Guideline and the reply from the MNR was short and
2 sweet, and this is a direct quote:

3 "Revisions to the District Land Use
4 Guideline resulting from decisions made
5 in the timber management planning process
6 will be made when the plan is submitted
7 for approval."

8 The reference there is Exhibit 1433A, Tab
9 5, page 6.

10 It is clear in our view, Madam Chair and
11 Mr. Martel, at least in this instance, the DLUGs are
12 not driving the timber management planning process.
13 They are not binding on the timber management planners.
14 That's part of the evidence we are relying upon when we
15 say to you, these DLUG categories are permissive at
16 best.

17 In fact, in this instance it seems like
18 the timber management planning process is driving the
19 DLUGs. We will just amend the DLUGs to conform with
20 the timber management plan. .

21 That's why Mr. Robinson expressed some
22 strong comments to the Board about District Land Use
23 Guidelines during his testimony and his testimony on
24 this point is found at Volume 249 starting at pages
25 44,837, and in particular Mr. Robinson said this:

1 "I asked the unit forester, I said:
2 Are you -- is there really a proposal for
3 a bridge across the Mississagi Park and
4 he said: Yes. I said, pretending that I
5 knew what I was talking about: That's
6 contrary to the land use guidelines. He
7 shrugged and sort of said: That's okay,
8 we will just apply for amendment..." and
9 then he got the letter that he got that I just read
10 into the record.

11 Mr. Robinson at page 44,838 stepped back
12 and commented on this practice and said:

13 "I'm sorry, I don't understand this
14 concept of guidelines that the Ministry
15 of Natural Resources has. I am a teacher
16 and we have guidelines and the guidelines
17 tell me in mathematics: Here are the
18 core units you must cover. Even though
19 they call it a guideline I have to cover
20 that."

21 On the next page Mr. Robinson comments:

22 "The Ministry has a really interesting
23 idea about guidelines, as far as I can
24 figure. No. 1, if the guideline -- if
25 they don't like something in the

1 guideline and I question it they will
2 tell me they were only guidelines, they
3 are flexible. In fact, Mr. Klugman,
4 I believe, in a letter he responded to me
5 said that..." and he refers to that
6 particular letter.

7 "So when I questioned him about a
8 guideline, one response is: Well, they
9 are only guidelines, so we will ignore it
10 or we don't have to abide by it because
11 it is only a guideline and it is even
12 mentioned here, guidelines provide some
13 flexibility..." and that was a quote from
14 the letter.

15 Mr. Robinson said:

16 "Okay, that's fine. On the other hand,
17 if that argument doesn't work, then they
18 do -- you know, or if it is too big a
19 deal to kind of ignore, like a bridge
20 across the Mississagi Waterway Park, then
21 the forester just says: Oh, well, we
22 will amend it. So that is response No.
23 2.

24 "However, in the case where they want
25 to do something that perhaps I object to

1 and the guidelines support them, one of
2 the responses will be: Well, you know,
3 here is the guideline, it supports our
4 position. I mean, when it suits them
5 they use the guideline and when it
6 doesn't they don't."

7 Madam Chair, Mr. Robinson has put the
8 issue and the concern more clearly than I could and I
9 commend his comments to you.

10 Clearly, the District Land Use Guidelines
11 are not binding on planning teams, they are no more
12 binding on planning teams than any other guidelines or
13 Codes of Practice.

14 So FFT says to this Board, it says with
15 the greatest of respect, let's drop this pretense that
16 District Land Use Guidelines drive the timber
17 management planning process.

18 Now, as I have said, those submissions
19 are summarized at page 136 of the argument. You will
20 note that on that page we have also referred to the
21 Report No. 48 of the Environmental Assessment Advisory
22 Committee. That was the report the committee issued in
23 relation to three specific bump-up requests.

24 Now, Mr. Freidin said that the Board
25 should give that report little or no weight since EAAC,

1 the committee, did not sit as long as this Board has
2 and because no cross-examination occurred with respect
3 to the submissions before the committee.

4 Madam Chair, in our view the
5 environmental assessment committee got it right.
6 Despite being deprived of the benefits of
7 cross-examination and despite being deprived of the
8 pleasure of sitting through four and a half years
9 evidence EAAC got it right.

10 That is why we urge the Board to read the
11 EAAC report and to rely on it because that is a
12 specialized and experienced committee and we refer to
13 and rely upon those findings in that report.

14 If you look at the report I think it
15 would also be important to look at the lengthy list of
16 submitters who made submissions to EAAC on that issue.
17 In all, EAAC received some 64 submissions from
18 individuals and groups and agencies including some with
19 with familiar names, the OFIA, the OFAH, FFT, NOTOA,
20 NORTHCARE, the Windigo Tribal Council and the MNR.
21 In fact, the MNR made four submissions to EAAC.

22 So I think it is fair to conclude that
23 EAAC had a fair and reasonable opportunity to canvass
24 the issues, the parties made their presentations there.
25 We ask the Board to read that document and rely upon it

1 to support the concerns I have just raised about the
2 District Land Use Guidelines and the inadequacy of the
3 MNR's planning process.

4 Now, Ms. Cronk made a submission to you
5 that I would like to respond to very briefly. She said
6 that this Board has no jurisdiction to impose terms and
7 conditions that are land use driven, to use her phrase.

8 She also said the Board cannot undertake
9 a broad review of MNR policies and objectives which may
10 relate to timber management.

11 If that is her submission, Madam Chair,
12 then I submit that it is contradicted by the OFIA terms
13 and conditions. I am not going to ask you to turn to
14 them, but when you read them, again, look at condition
15 No. 1.

16 Condition No. 1 talks about broad
17 provincial objectives, the Industry wants, you know,
18 broad provincial committees to be established to
19 establish broad planning objectives and programs.
20 These broad planning objectives and program are to be
21 translated at the regional level by a regional
22 committee and thereafter into something they call
23 integrated resource plans.

24 Madam Chair, when you read those
25 conditions, they strike us and should strike the Board

1 as land use planning.

2 As Mr. Freidin said last week, land use
3 planning is land use planning is land use planning. In
4 our respectful submission, that particular Industry
5 submission looks like land use planning to us.

6 Of course if the OFIA legal argument is
7 to be accepted, the Board has no legal jurisdiction to
8 impose that condition.

9 However, in fact and in law the Board
10 does have jurisdiction to consider those issues, the
11 Board does have jurisdiction to consider broad MNR
12 policy and government policy to see if they adequately
13 protect, for example, non-timber uses and values within
14 the area of the undertaking.

15 This argument is summarized at pages 28
16 and 29 of the FFT argument; that is, the Board's
17 general jurisdiction to review and influence government
18 policy.

19 Let me summarize FFT's land use planning
20 argument in the following manner. Firstly, DLUGs do
21 not represent binding or legally enforceable or
22 credible land use planning.

23 Secondly, the District Land Use
24 Guidelines do not represent integrated upper tier
25 management plans, they are not analogous to the U.S.

1 Forest Service forest management plans.

2 Thirdly, when timber management planners
3 are allocating stands for harvest or deciding where to
4 put a road they are, in fact, making land use planning
5 decisions, whether or not the MNR cares to recognize
6 it.

7 Madam Chair and Mr. Martel, that is why
8 FFT is asking the Board to approve a planning process
9 which will do two things; ensure that timber management
10 decisions are made in an integrated manner and ensure
11 full public participation in the making of these
12 decisions. That's essentially what FFT is asking for.

13 Mr. Freidin has said, this kind of
14 integrated planning, the kind of planning advocated by
15 FFT will lead to chaos. Now, this is his exact word,
16 'chaos'.

17 Well, I have news for Mr. Freidin and the
18 MNR, it is already chaos out there, even where elements
19 of the MNR's planning process have been implemented.

20 In fact, Mr. Martel, you said to one of
21 our lay witnesses that it seems like it is a war out
22 there, that is your phrase, 'a war out there.' I
23 submit that that's, in fact, a finding this Board can
24 make on the evidence.

25 That's why we ask the Board to carefully

1 consider the evidence of FFT's lay witnesses. We ask
2 the Board to carefully consider the evidence submitted
3 by members of the public at community hearings.

4 I think it is fair to say there is a lot
5 of land use conflict and public dissatisfaction with
6 the current process, and even with the new process the
7 new plans that are being developed in accordance with
8 MNR's proposals.

9 Now, FFT does not pretend that its
10 planning process will automatically end all land use
11 conflicts. Mr. Freidin is right when he says no
12 planning process can guarantee consensus, but based on
13 the evidence, Madam Chair and Mr. Martel, FFT submits
14 that its planning process is more likely to reduce or
15 minimize conflicts by, one, enhancing integration of
16 timber and non-timber resource planning; two, by
17 enhancing public participation; thirdly, by enhancing
18 environmental protection within the area of the
19 undertaking.

20 Now, Ms. Swenarchuk and I will explain
21 the elements of and the justification for FFT's
22 planning proposals today and tomorrow.

23 This concludes our submissions on what we
24 have called the EA and land use planning issues and we
25 certainly do propose to move on, perhaps take a lunch

1 break, unless the Board has further questions about the
2 submissions I have reviewed with you on EA and land use
3 planning.

4 MADAM CHAIR: One question, Mr. Lindgren,
5 with respect to your interpretation of the description
6 of the undertaking.

7 Could you describe for the Board what you
8 see the planning process of this Class EA is without
9 the four activities? If we remove the four activities
10 of access, harvest, renewal and maintenance and
11 protection, what is left in the planning process?

12 MR. LINDGREN: The short answer is you
13 can't separate the planning process from those
14 activities and we are not asking you to.

15 You are being asked to approve a planning
16 process in respect of those four activities. The MNR
17 has put to you one version of doing that, FFT has put
18 to you another way of planning those four activities,
19 and in FFT's view FFT's proposals will more effectively
20 meet the purpose of the undertaking and more
21 effectively protect non-timber uses, values and
22 resources within the area of the undertaking.

23 MADAM CHAIR: Thank you, Mr. Lindgren.

24 Do you want to take our lunch break now?

25 MR. LINDGREN: Yes.

1 MADAM CHAIR: All right. We will be back
2 at 1:30.

3 ---Luncheon recess at 11:55 p.m.

4 ---On resuming at 1:45 p.m.

5 MADAM CHAIR: Please be seated.

6 Good afternoon, Mr. Lindgren, Ms.

7 Swenarchuk.

8 Sorry, I'm late getting back. If you
9 need an extra 15 minutes over these two days Mr. Beram
10 suggests we do it tomorrow because we have to vacate at
11 four today. Please continue.

12 MR. MARTEL: Could I ask a question
13 before, and maybe you can direct me to the references.
14 But your paragraph 13 in your summary, we went to the
15 field to a lot of site visits asking all of the parties
16 at the hearing to in fact -- and we were willing to go,
17 as you know, to see all of these type of adverse
18 conditions that occur, and I'm not sure we were all
19 that successful in seeing all of these.

20 And so I would like to make two points:
21 (a) could you get me some indication for where in the
22 transcripts I could find all of this evidence; and the
23 second question is: Does this predate primarily post
24 19 -- or pre-1980, and what are the conditions like
25 after the advent of the forest management agreements

1 and so on?

2 Are we dividing it in two? I'm just
3 going by memory that my stuff on clearcuts is, yeah,
4 pre-1980 we did a lot of huge clearcuts, and the latest
5 information we had after, I guess it was, about a year
6 ago when we got the information, after our Armstrong
7 visit, that in fact clearcut sizes of extensive are not
8 there, there are some but not a lot.

9 And so I'm trying to get a handle on
10 precisely when and where we're talking about for all of
11 these adverse conditions. And the reason I question
12 it, you don't say potential adverse, so that makes it
13 much more definitive and if you could do that I would
14 appreciate it.

15 MS. SWENARCHUK: Mr. Martel, we're
16 turning for this afternoon precisely to the evidence of
17 adverse environmental effects.

18 First of all, with regard to site visits,
19 it is the case that a small intervenor cannot
20 participate -- or let me speak for my client. We were
21 not able to participate in the site visit process to
22 the extent that we wished to be able to and that is
23 strictly a matter of resources.

24 We were able to provide some locations
25 for visits, we were not able to be present on most of

1 the site visits and to evaluate what you were being
2 shown relative to what our witnesses have described for
3 you, some of which we will review this afternoon.

4 I hope the Board is able to appreciate
5 that the position of an intervenor in this regard, as
6 experienced by my clients, has been different than the
7 position would have been had we had many more
8 resources.

9 Secondly, the evidence which we consider
10 to be evidence of actual effects is the evidence that
11 was presented to you by our witnesses some of which, as
12 I say, we will review this afternoon. And, as well,
13 that evidence has been summarized with references
14 provided in our written argument and I'll be bringing
15 your attention to those references again this
16 afternoon.

17 I'll be addressing specifically later
18 this afternoon the question of the most current
19 information with regard to cut sizes and, again, I
20 appreciate your raising the question of the site visits
21 because we do feel in a sense we're responding in the
22 dark on those.

23 We've been able to look at the accounts
24 of what you saw but we weren't there and certainly we
25 were not in the position of responding, of being able

1 to organize response to what you were able to see.

2 And, lastly, you'll recall that the
3 ruling of the Board at the beginning of this case
4 confirmed two years ago - and it's important that we
5 recall this - is that information derived from site
6 visits is not evidence, it can be used for the purpose
7 of understanding the evidence but it is not evidence
8 and is not a substitute for the evidence properly
9 admitted before you in the hearing.

10 It was for that reason that we could not
11 commit our resources, for example, to the site visit we
12 had planned to guide the Board on. We simply could not
13 commit resources to an exercise that could not
14 constitute evidence. We considered that at the time
15 regrettable and still do, but that was an instance in
16 which very, very concretely as an intervenor our
17 resource situation operated to the prejudice of perhaps
18 the Board's opportunity to see a particular range of
19 sites and also ours.

20 I appreciate very much though your
21 setting the context for this afternoon and I hope that
22 the review we provide you this afternoon will go some
23 way to responding to that. I certainly invite any
24 further questions you have.

25 Turning our attention now for the

1 afternoon to the issue of environmental effects, Madam
2 Chair, Mr. Martel, we will be proceeding through a
3 number of issues which I'll try to outline for you now.

4 The first will be an introduction that I
5 will do to the question of environmental effects and
6 their role in this hearing. We're then going to show
7 you, or recall to your attention a small number of
8 slides, all of which you've seen before, which again
9 recall some of the kinds of effects that were properly
10 presented to you in evidence in the hearing.

11 My colleague, Mr. Lindgren, will then
12 discuss environmental effects associated with access.
13 I will then deal with some of the economic issues
14 raised by the Industry with regard to environmental
15 effects. I'll then review Forests for Tomorrow's
16 position with regard to pesticides. I'll then be
17 referring in more detail to the written argument that
18 we have presented with regard to range of environmental
19 effects, actual effects.

20 I'll review our submissions regarding
21 full tree harvest and then I would like to review with
22 you what the current evidence shows with regard to
23 clearcut sizes at this time; and then, if there's time
24 this afternoon, we will be turning as well to questions
25 of wood supply and sustainability which we consider are

1 also issues of environmental effects and, finally, to
2 our silvicultural planning terms and conditions.

3 I might just say though, Mr. Martel, in
4 further response to your question, that I think it will
5 become clear as we review this evidence that the
6 evidence that our witnesses presented to you was
7 current, almost to the date of their testimony. The
8 slides, for example, were virtually all taken within a
9 year prior to testimony, and I believe the context of
10 the testimony of, for example, Mr. Marek and Mr.
11 Benson, and of course the lay witnesses, and of course
12 the community witnesses whom you've heard have all made
13 it clear that the type of effects that concern us are
14 continuing to this time.

15 We'll also have to distinguish, of
16 course, between those effects which are visible to the
17 eye and those which are not. For example, some of the
18 hydrological effects of clearcutting we'll review in a
19 moment in some of the slides, but some of them
20 presumably are not visible such as the increased water
21 loss and potential in this case nutrient loss
22 associated with hydrological changes from large
23 clearcuts. Some of them would be visible, some of them
24 would not be. But certainly we're talking about
25 practices that were current throughout the FMA regime

1 that is up to the day of testimony here. And with
2 regard to cut sizes I'm going to suggest to you that
3 the practices are current to this time, in fact are
4 planned in the current plans.

5 So with that introduction to the
6 introduction, it's the position of Forests for Tomorrow
7 that evidence of actual effects is the best evidence
8 before the Board for evaluating the Ministry's and the
9 Industry's positions, especially since the planning
10 process for which the Ministry is seeking an approval
11 has been largely implemented beginning before the
12 hearing began.

13 Now, I believe Mr. Freidin suggested that
14 it's too early to judge the results of that planning
15 process since it's been implemented only since 1986.
16 It's the position of Forests for Tomorrow, however,
17 that it's not too early to judge its results and that
18 the evidence of the effects occurring related to
19 forestry practices is evidence that is most cogent to
20 this Board.

21 It's our view that we are not only
22 entitled to look at what has happened under this
23 process but that it would fail in performing the public
24 interest if we didn't do so.

25 I hope this word won't become overused,

1 Madam Chair, but in our view it would be really a
2 charade to proceed through a hearing, an environmental
3 assessment hearing which is different than most because
4 it's an assessment of an ongoing activity, set of
5 activities as opposed to most environmental assessments
6 which are preproject assessments. There is evidence,
7 there is factual information because this is an ongoing
8 undertaking and, in our submission, it's important to
9 look at it.

10 Nevertheless, the proponent did no
11 studies of actual effects of harvest practices. You'll
12 recall our cross-examination of the MNR Panel 10
13 witnesses in which we asked each one in turn with
14 regard to the area of expertise to which he was
15 testifying whether any actual studies had been done and
16 they had not been done, and the Ministry has maintained
17 its position that evidence of potential effects only is
18 necessary.

19 Now, this has had the result that my
20 client and members of the public, without anything like
21 the resources of the proponent and the Industry, were
22 required to produce evidence across this enormous area
23 of actual effects. We did so to the limited extent
24 that our resources permitted and we ask you to consider
25 this limitation in considering the extent of the

1 evidence available.

2 Nevertheless, it's our submission that
3 the weight of the evidence is considerable. We noted
4 in our written argument that it is important to recall
5 that the OFIA requested and received a right of reply
6 to allegations made of improper practice. As stated by
7 Madam Chair at the time - and we agree with this - the
8 purpose of evidence of improper practice is not to
9 focus attention on any one company or operator but on
10 the problems of environmental protection that ensue.

11 Nevertheless, the Industry was entitled
12 and had access to information before the evidence was
13 led and additional evidence with regard to allegations
14 was provided to them during Mr. Marek's testimony. The
15 Industry had the opportunity to reply to that evidence
16 and, in our submission, did not substantially do so.
17 No such evidence was produced during the reply phase,
18 although they were entitled to do so.

19 Now, Mr. Cassidy has said in oral
20 argument that evidence in the cross-examination or
21 otherwise demonstrates that these actual effects did
22 not exist, were vague in the extreme or were mitigated.
23 We hope to persuade you by reviewing some of the wealth
24 of evidence that is there that that's incorrect.

25 Now, Mr. Freidin in oral argument

1 dismissed the issue of environmental effects in about
2 30 seconds and suggested that the issues be determined
3 by reference to the U.S. panel of experts whose report
4 is included --

5 MR. FREIDIN: I did not.

6 MS. SWENARCHUK: Excuse me, Mr. Freidin?

7 MR. FREIDIN: Pardon the interruption.

8 MS. SWENARCHUK: Yes. The Board may want
9 to look at the transcripts, but this is my
10 understanding of the suggestion.

11 That it would be most relevant for the
12 Board to consider the report of the U.S. panel of
13 experts which reported in 1970 in the U.S. and whose
14 recommendations, particularly for example with regard
15 to clearcut size limitations, were largely honoured
16 largely in the breach in the U.S.; that is, they were
17 not accepted.

18 We think it's most unfortunate that the
19 proponent would suggest that a 1970 American report
20 provides any kind of guide to what forest practices
21 should be in Ontario in the 90s and into the next
22 century. In our submission, MNR's position on
23 environmental effects could well be described as no
24 concessions; see no problems, hear no problems, admit
25 no problems. A complete rejection that there are

1 problems with how the four activities for which the
2 Ministry sought a blanket approval in this case are
3 carried out in normal operations.

4 Now, I've suggested previously that had
5 the Ministry at the beginning of the case taken these
6 issues seriously the case might have been considerably
7 shortened. There would have been another beneficial
8 effect, however, and that is, that perhaps some
9 accommodation of different points of view would have
10 been possible for further shortening of proceeding, and
11 that's a process that's entirely consistent with an
12 environmental assessment process.

13 Now, in addition to the FFT evidence of
14 environmental effects, the Board also heard of other
15 improper practices through the community hearings, and
16 some of that testimony we have collected and produced
17 for you in our appendix to our argument.

18 The Ministry of Environment also led
19 evidence regarding environmental effects, particularly
20 related to full-tree logging. Now, we refer you - and
21 we will come back to this in more detail - to pages 156
22 to 185 of our written argument regarding environmental
23 effects and to the extensive sources cited on those
24 pages, also to pages 374 to 383 with regard to
25 documented infractions - these are the monitoring

1 reports - infractions of statutes, regulations in
2 timber management plans.

3 Now, there's a fundamental position in
4 the evidence, a fundamental difference in evidence and
5 in the position of Forests for Tomorrow vis-a-vis the
6 Ministry and the MNR. It's our view that there has
7 been no adequate response to all of this evidence, that
8 the full weight of the evidence does not indicate
9 significant changes in practice to eliminate many of
10 these negative impacts.

11 In fact, you'll recall the position
12 stated with regard to this by Mr. Greenwood in the
13 Ministry's Panel 10, Exhibit 416A at page 228:

14 "Since the potential for productivity
15 loss in Ontario is not considered
16 significant given current harvest
17 practices and rotations, measures to
18 prevent or minimize these potential
19 effects do not normally form part of
20 operational decision-making at this
21 time."

22 Further, current practice, in the view of
23 FFT, consisting almost universally in the boreal forest
24 of large area clearcutting with full-tree logging and
25 the passage on the land of large, heavy equipment is

1 continuing to have serious negative effects on the land
2 and potentially on its future productivity.

3 Now, it appears that the MNR response to
4 concerns regarding unacceptable effects on the physical
5 environment is proposal for environmental guidelines.
6 Now, FFT was pleased with this initiative but we now
7 see in the MNR argument at page 661, second full
8 paragraph, the following:

9 "Although MNR has not made any firm
10 decisions regarding primary use of the
11 proposed environmental guidelines, it is
12 anticipated that the manual will
13 address the general subject of site
14 productivity, in particular, nutrient and
15 compaction concerns and the subject of
16 clearcutting."

17 Now, we were very disappointed to see
18 this statement in the argument. In our view it's he
19 equivalent to saying nothing on the entire subject of
20 negative environmental effects of forestry and nothing
21 in response to all the evidence presented regarding
22 actual effects. The Ministry apparently has not yet
23 even made a firm decision with regard to how these
24 environmental guidelines will be used.

25 It is the position of Forests for

1 Tomorrow that this intransigence on the part of the
2 Ministry is the best evidence the Board could receive
3 as to why it is necessary for the Board to order
4 significant changes in timber management activities and
5 the use of alternative methods of carrying out the
6 undertaking.

7 And we would like to now to show you,
8 recall for you a small number of slides with regards to
9 environmental effects.

10 I want to recall to you first that at
11 last count our estimate is that FFT witnesses, both
12 experts and lay witnesses, have provided you with
13 approximately a thousand slides relating to
14 environmental effects, that's in addition of course to
15 the written testimony and the oral testimony that
16 you've received.

17 And we certainly hope that in considering
18 your decision you will consider fully all the
19 information that's contained in those slides as well as
20 the written and oral testimony.

21 We haven't gone to the most egregious
22 examples for this short slide review, but rather just
23 want to recall some of the kind of issues that have
24 been raised through this testimony.

25 Let me take this opportunity to introduce

1 to you Mr. Gerald Laarhus, L-a-a-r-h-u-s-, who is a
2 student with us at Canadian Environmental Law
3 Association and Barry Maxwell whom you have previously
4 met.

5 We first present a series of slides
6 having to do with large cuts. This is slide No. 10
7 from Mr. Benson's slides listed at Exhibit 1608. It's
8 a large cut-over of various sites with bare soil in the
9 Domtar/Armstrong unit and the slide was taken in July
10 of 1989. This is not very good light.

11 You'll recall, Madam Chair, Mr. Martel,
12 that you have hard copies as well as slides for each of
13 these. I'm sorry the projection is not better.

14 MR. FREIDIN: Which slide is that? Do
15 you have a --

16 MS. SWENARCHUK: The next one is Mr.
17 Benson's slide 104, a large clearcut near the clearcut
18 exercise area with small residuals left. This is in
19 the Matawin/Dog River area and the slide was taken also
20 in July of 1989.

21 This one is Mr. Benson's slide 423, a
22 large clearcut area in the Sioux Lookout Crown
23 Management Unit taken July, 1989.

24 This one is Mr. Benson's slide No. 182,
25 clearcut to a lake in which the intent was to make the

1 area aesthetically pleasing.

2 This is in the English River forest.

3 This slide dates from 1984. This slide is from Mr.
4 Marek, listed in his slide list, which is Exhibit 1521
5 as slide No. 42. This is black spruce upland shallow
6 sites cut-over in the Long Lac Forest, picture taken
7 1990.

8 MR. FREIDIN: What slide was that?

9 MS. SWENARCHUK: That was Marek's slide
10 42.

11 MR. FREIDIN: 42. Thank you.

12 MS. SWENARCHUK: This one is Marek's
13 slide 44, normal operations, Sangster Township in the
14 Iroquois Falls Forest 1987.

15 MR. MARTEL: Can I stop you there just
16 for one moment.

17 MS. SWENARCHUK: Would you go back to
18 that previous slide, please.

19 MR. MARTEL: I just want to raise a
20 question with these. I see what's before me, but I'm
21 not being told what the damage is. Maybe that's going
22 too far, I'm trying to be fair to you, but just to show
23 me a picture of a clearcut, I'm not sure if you're
24 asking me to assume that that's causing a problem or
25 you just want to show me the clearcut.

1 You see, that tells me nothing, and I'm
2 just wondering if you could just, if it's possible, if
3 it's not, just refer me, I have the reference of the
4 slide but I don't think we saw all the slides, maybe
5 all of these, but I don't think we saw all of Mr.
6 Benson's slides.

7 But, as I say, what I worry about is just
8 receiving this and no indication, and I guess I can
9 look it up, as to what the actual significance of the
10 clearcut is in terms of environmental damage. I'm not
11 sure if I make myself clear.

12 MS. SWENARCHUK: Yes, certainly you do.
13 I think there are two issues to respond to. First of
14 all is the issue I'll deal with later in the afternoon
15 about whether we stop cutting large areas in Ontario,
16 and I think the weight of evidence indicates that we
17 still cut very large areas.

18 Secondly, the issue becomes what are the
19 effects of large area clearcutting. I don't expect in
20 some of these slides for effects to be necessarily
21 visible to the eye. We have summarized in some detail
22 in our written argument what our expert witnesses said
23 to you about the effects they consider flow from large
24 area clearcutting, and that's evidence of Dr.
25 Hutchinson, Mr. Marek, Mr. Benson, and also within the

1 context in which he operates, Mr. Smith.

2 One obvious effect I think that shows in
3 various of the slides, Mr. Martel, are such effects as
4 scarification to rock, in some cases. We will see
5 later on in this display significant disturbance of the
6 forest floor. You'll recall the evidence of MNR
7 witnesses, particularly Mr. Armson, that forest
8 operations normally do not disturb the forest floor and
9 that that's very important, that it not be disturbed.

10 We will see as well hydrological changes
11 in some of them and then we'll ask you to recall the
12 evidence of Mr. Marek with regard to the effect of
13 these hydrological changes that he's observed on
14 plantation mortality.

15 So we want to recall for you at this
16 moment what normal operations often look like out
17 there. I don't know whether you were shown normal
18 operations that looked like this in your site visits,
19 that's part of the blind spot we're forced to operate
20 in, and then we will be discussing later what --
21 reviewing later what some of our witnesses said to you
22 are the likely effects of such cuts. Is that helpful
23 to you at this time?

24 MR. FREIDIN: Could I have the reference
25 to where Mr. Armson said that it's important that there

1 not be disturbance of the forest floor, as you have
2 just suggested?

3 MS. SWENARCHUK: I'm not suggesting he
4 used those exact words. We're suggesting that he said
5 that that is usual in practice and certainly the
6 inference is that it's important to protect forest
7 floor. However, we'll check the reference for you.

8 MR. FREIDIN: Thank you.

9 MS. SWENARCHUK: The next slide then,
10 this is George Marek's slide No. 131. This was 1984,
11 cut-over of black spruce stands in which the site has
12 been taken over by heavy cover of grasses. This is in
13 the Iroquois Falls Forest and the picture was taken in
14 1987.

15 This just simply does not project well.
16 It's a photograph of a large clearcut area taken
17 aerially. I'll refer you to Exhibit 1435 which was the
18 photographs from our lay witnesses and this is
19 photograph No. 6 by Mr. Robinson. He also provided you
20 with quite a number of other photographs of large cuts
21 very current. This picture was taken in 1989.

22 Now, another type of actual environmental
23 effect which, were you taken to certain areas, would
24 have been visible to you has to do with erosion caused
25 during timber management activities.

1 This is Mr. Benson's slide 116, it's
2 erosion of a ditch south of Lake Shebandowan in the
3 Matawin/Dog River area in September of 1988. You'll
4 recall Mr. Martel that our witnesses testified for you
5 in the fall of 1990.

6 This is also an example of erosion, it's
7 Mr. Benson's slide 1555. It demonstrates erosion
8 besides a road in a ditch going to a creek of a
9 previous photo, which we're not reviewing here today,
10 in Opasatika Township in the Gordon Cosens Forest, and
11 this slide was taken in August of 1989.

12 And this is another example of erosion.
13 This slide was taken by Mr. Kapel, one of our lay
14 witnesses and, therefore, the Exhibit No. was 1435 and
15 this is Mr. Kapels' slide No. 5, water crossing over
16 Dougherty Creek. You'll recall that this is the lay
17 witness who showed you slides of such issues as blue
18 heron nests having been cut down.

19 Now, we have a number of slides of what
20 our foresters consider to be site damage from timber
21 management activities. This is Mr. Benson's slide 115,
22 a large clearcut scarified to rock south of Lake
23 Shebandowan in the Matawin/Dog River area in September
24 of 1988.

25 And this one is Mr. Benson's slide 251,

1 ruts in a low site adjacent to an upland site on the
2 right at the back end of the photo, and this is a
3 Spruce River Forest FMA in July of 1989.

4 The next series are slides from Mr. Marek
5 in Exhibit 1521. This is his slide No. 60. This
6 demonstrates the rise of the water table in Long Lac
7 Forest in 1990 in this large strip cut.

8 This is Mr. Marek's slide No. 91. There
9 are seedlings planted in this site, they're not clear
10 in this projection, they're more clear on the
11 photographs that you have. This indicates the flooding
12 of container stock planted on heavily disturbed muck in
13 1990 in Lake Nipigon Forest.

14 This is Mr. Marek's slide No. 72, again,
15 the water rise after harvest in Hanna Township, 1987,
16 Quebec-Ontario Paper. And you'll recall I think Mr.
17 Marek's testimony and his concern throughout with
18 regard to the hydrological effects of large area
19 clearcutting. Mr. Marek I think testified very
20 concretely about that and provided you with slides
21 demonstrating examples of it.

22 Mr. Benson and Mr. Hutchinson both, I
23 think, provided you with some of the theory in the
24 science and in forestry technical papers with regard to
25 what is happening here, the rise in water table and the

1 potential for nutrient loss resulting.

2 Next slide. This is now slide 79, a
3 detail showing the air space in 1987 in Lake Nipigon
4 Forest and this slide was taken in 1990. And you may
5 recall the evidence of Mr. Marek and the concern with
6 regard to the effect on plantations of these
7 hydrological rises and then the receding of the water
8 table over time which leads, he testified, in some
9 areas to an actual air space being created subterranean
10 so that planted seedlings' root systems do not properly
11 develop, and this is an example probably again more
12 clear in your hard copies of that problem.

13 MR. FREIDIN: What slide was that?

14 MS. SWENARCHUK: This is Mr. Marek's
15 slide 79.

16 MR. FREIDIN: Okay.

17 MS. SWENARCHUK: Now, the next slide is
18 Mr. Benson's slide 169, again Exhibit 1608, and this
19 indicates a large clearcut planted and sprayed with a
20 herbicide. It's an example of concerns that our
21 witnesses expressed that, in fact, treatment of large
22 forest areas is not site-specific but rather large
23 areas all receive the same treatment and this is an
24 example of that. This is in Cargill Township of the
25 Gordon Cosens Forest and picture was taken August,

1 1989.

2 And this one is Mr. Benson's slide 170, a
3 large clearcut planted and sprayed with a herbicide
4 killing, amongst other species, oak. This is in the
5 same area as the previous slide.

6 And this is another slide related to
7 questions of pesticide use and it's a slide taken by
8 Mr. Kapel, it's in Exhibit 1535, it's his No. 13 and
9 it's MNR photo of herbicide drift in Missinabie
10 Provincial Park.

11 Now, we have only included one slide,
12 Madam Chair, Mr. Martel, to recall to your mind volumes
13 of evidence really that you have received regarding the
14 current effects of timber management on non-timber
15 values. This is slide No. 6 by our lay witness Mr.
16 Tunnicliffe in Exhibit 1435, and it's a clearcut across
17 a ski trail in March of 1990.

18 In our submissions you have received a
19 great deal of evidence from our witnesses, from lay
20 witnesses in the community hearings of the impacts now,
21 actual impacts of timber management activities on a
22 whole broad range of non-timber values; tourism,
23 wildlife, trapping. Some of that evidence, as I say,
24 is collected for you in our appendix.

25 And our last slide, and again it's to

1 recall to you many slides on this subject, has to do
2 with waste. This was taken by Mr. Oliver, a lay
3 witness, it's his slide No. 119, and it's waste in the
4 Blind River District, Havrot Township. And you may
5 recall that he showed you or provided you with dozens
6 of pictures of waste wood in many districts and units,
7 also dumps, actual camp dumps left on the land.

8 Now, this is just a small sample. We
9 didn't take your time to project and show you in our
10 evidence all of Mr. Benson's over 500 slides or all of
11 the hundreds of slides provided to you by the lay
12 witnesses. We did go through Mr. Marek's slides, as
13 you recall, and he was on the stand for 16 days, but
14 you do have hard copies of those slides and
15 descriptions and we do ask you to consider them in
16 looking at the whole question of environmental effects.

17 Mr. Lindgren is now going to address you
18 with regard to environmental effects associated with
19 access. I see that it's 2:25. He'll be some time in
20 those submissions. Would you like to take the break
21 now?

22 MADAM CHAIR: That's up to you, Ms.
23 Swenarchuk.

24 MS. SWENARCHUK: We'll be about half an
25 hour.

1 MADAM CHAIR: We're prepared to go ahead
2 and hear the argument on access.

3 MS. SWENARCHUK: It appears that we can't
4 in fact have more than one on at one time.

5 MR. LINDGREN: Madam Chair and Mr.
6 Martel, FFT's access planning argument is found at
7 pages 107 to 155 of volume 1 of the written argument.

8 Now, when Mr. Freidin talked about access
9 planning he didn't deal with this issue very
10 extensively. You might recall his submission
11 essentially amounted to this: On the one hand you've
12 got the OFIA proposals and on the other hand you've got
13 the FFT proposals and conveniently the MNR's proposals
14 are right down the middle in terms of documentation
15 requirements and so forth and then Mr. Freidin went on
16 to another issue.

17 Madam Chair, Mr. Martel, we believe
18 access planning to be one of the most contentious
19 issues that this Board has heard about in this hearing
20 and we submit that the MNR response through Mr. Freidin
21 is totally inadequate, and that's why we prepared a
22 number of detailed submissions in our written arguments
23 on the issue of access.

24 As I mentioned there's some 50 pages of
25 argument dealing with this very issue. I don't intend

1 to review all of it with you, but I think those
2 submissions can be boiled down into four main
3 submissions.

4 The first is that FFT submits that on the
5 evidence access roads and water crossings constitute
6 one of the most environmentally significant and
7 publicly controversial timber management activities. I
8 don't think there would be any dispute from any of the
9 parties as to the accuracy of that submission.

10 Now, the Board has heard considerable
11 evidence from FFT's lay witnesses such as Mr. Nixon and
12 Mr. O'Connor, Mr. Armstrong, Mr. Kapel and others who
13 detailed for you the various concerns that they had
14 about road planning and road construction.

15 Now, their written evidence has been
16 filed in the FFT panel 2 witness statement. A number
17 of them, as Ms. Swenarchuk has indicated, filed
18 photographs indicated what they perceived to be road
19 construction problems, and if you review those
20 photographs, if you review their evidence, you'll find
21 that again most of these concerns arose out of
22 activities that were undertaken since 1980 and, in
23 fact, most of them seemed to have occurred, most of
24 these activities relating to access seemed to have
25 occurred since 1988. So, again, those FFT lay

1 - witnesses were concerned about current practices
2 respecting access.

3 The Board also heard concerns about roads
4 from many members of the public at the community
5 hearings, and you'll find many transcript references
6 relating to those communitiy hearings sprinkled
7 throughout FFT's access planning argument.

8 The Board also heard evidence from Ms.
9 Dahl on the issue of bump-up and she indicated that a
10 number of bump-up requests have been made in relation
11 to access planning issues.

12 Now, unlike the MNR, FFT submits that the
13 nature and number of bump-up requests are significant.
14 In our view - and I'll discuss this in more detail in
15 relation to bump-up - the number of bump-up requests
16 does demonstrate that there are problems with the
17 timber management planning process, particularly as
18 they relate to access. If people were happy with the
19 the process, if they thought there was a legitimate
20 attempt to accommodate their concerns, I submit we
21 should be seeing fewer bump-up requests but in fact the
22 number of bump-up requests are increasing.

23 The second submission FFT makes in
24 relation to access, and it's related to the first
25 submission, is this: fFT submits that on the evidence

1 access roads can cause and have caused adverse effects
2 upon the natural environment, the socio-economic
3 environment and the cultural environment within the
4 area of the undertaking.

5 Now, these effects can be short term and
6 long term, they can be direct and indirect, they can be
7 immediate or cumulative. Now, in our written argument
8 we have discussed these environmental effects and we
9 have discussed them under three general headings:
10 terrestrial effects, aquatic effects, and
11 socio-economic effects.

12 Now, the terrestrial effects of access
13 roads are summarized at pages 112 to 115 of the FFT
14 argument and you'll find transcript references and
15 documentary references at those pages. The effects of
16 access roads on the terrestrial environment include,
17 but are not limited to, such things as destruction of
18 habitat, loss of productive land base, damage to or
19 destruction of significant resources or sites,
20 disruption of wildlife movement, and so forth, and
21 these are just some of the environmental effects that
22 are discussed in the argument. There are others as
23 well and, again, replete with references to the
24 evidence.

25 In terms of aquatic effects these effects

1 are summarized at pages 115 to 120 of the written
2 argument. The aquatic effects of access include, but
3 are not limited to, increased surface runoff, erosion -
4 you just saw a few slides relating to erosion,
5 sedimentation of fish habitat, and that was Mr. Kapel's
6 concern, the erosion from the water crossing at
7 Dougherty Creek did cause sedimentation of fish habitat
8 according to Mr. Kapel. Disruption of ground water and
9 surface water flow and drainage, physical destruction
10 of aquatic habitat, interference with fish movement.
11 And, again, those are some but not all of the aquatic
12 effects that are discussed in the written argument.

13 The socio-economic effects of access
14 roads are summarized at pages 120 to 23 of the written
15 argument. These effects include, but are not limited
16 to, loss or impairment of wilderness values, excessive
17 hunting or fishing pressure, impairment of remote
18 tourism opportunities, loss or degradation of
19 recreational experiences, loss or impairment of
20 traditional uses and lifestyles. And, once again,
21 those are some of the socio-economic effects discussed
22 in FFT's evidence and presented to you by various
23 parties.

24 Now, the MNR has referred to many of
25 these effects as potential. They have said access

1 potentially can cause these effects. The MNR has
2 always claimed that the effects can be avoided or
3 minimized through the application of mitigation
4 measures.

5 Last week Ms. Cronk made the same
6 submission and our response is this, Madam Chair:
7 Mitigation might be possible in theory but, in
8 practice, access roads have caused and continue to
9 cause adverse effects despite this much vaunted ability
10 to mitigate the impacts.

11 In FFT's view then, Madam Chair, it is
12 open to the Board to find as a fact that roads are
13 still causing problems out there despite the road
14 construction guidelines, despite the availability of
15 mitigation techniques, despite MNR and Industry claims
16 to the contrary.

17 Now, Ms. Cronk has made two other
18 comments in relation to roads and road effects that FFT
19 would like to respond to. Firstly, Ms. Cronk referred
20 to Mr. Hogg's evidence and relied upon his conclusion
21 that, in general, the benefits of access outweigh the
22 disbenefits.

23 Well, Madam Chair, Mr. Martel, that may
24 well have been Mr. Hogg's evidence-in-chief, but Ms.
25 Cronk did not refer the Board to FFT's

1 cross-examination of Mr. Hogg on that very point, and
2 when we cross-examined him on that statement Mr. Hogg
3 confirmed that the MNR had conducted no studies, had
4 conducted no analyses to support the statement that the
5 benefits of access outweigh the disbenefits.

6 And, Madam Chair, the transcript
7 reference is in the written argument, I'll give it to
8 you again, it's Volume 129, page 21927. In short,
9 Madam Chair, there is no evidence to support the MNR's
10 rather sweeping claim that the benefits of access
11 outweigh the disbenefits.

12 Now, FFT fully recognizes that in some
13 instances there may very well be positive benefits
14 associated with creating access, there's no doubt about
15 that, but there's no evidence to support the MNR's
16 claim that at a provincial scale, at a regional scale,
17 at a local scale access benefits outweigh disbenefits,
18 there's no evidence to support that, and we ask the
19 Board to give that statement little or no weight.

20 The other statement from Ms. Cronk that I
21 would like to address before the break is this: She
22 referred to the community hearings and indicated that
23 there was no groundswell of opposition to roads. That
24 was her phrase, no groundswell of opposition to roads.

25 FFT's response is two-fold, Madam Chair,

1 Mr. Martel. Firstly, we have reviewed the community
2 hearing evidence and we could see no groundswell
3 support for more and more roads. We didn't hear
4 anybody, we didn't see anybody showing up and saying
5 that roads should access every square inch of every
6 stand of every unit in every district. Now, some
7 people said if there are going to be roads they should
8 be kept open, that's a different issue. But nobody, as
9 far as we can tell, were clamouring for more and more
10 access roads all over the area of the undertaking, that
11 just was not the case.

12 The second response is this, Madam Chair:
13 We respectfully disagree with Ms. Cronk's assessment of
14 the evidence. In our respectful submission, there was
15 considerable concern about roads and opposition to
16 roads expressed at the public hearings, at the
17 community hearings. And that is why, for example,
18 Madam Chair, some members of the public proposed that
19 some areas be kept in a roadless state. And those
20 comments have been reproduced at pages 147 to 49 of our
21 argument and we have reproduced those transcripts to
22 simply indicate that members of the public, not just
23 FFT, but members of the public have indicated that
24 there should be some areas that are left in a roadless
25 state. We don't need to pave over or gravel over every

1 inch of the area of the undertaking.

2 Perhaps that might be an appropriate time
3 for the break, Madam Chair.

4 MADAM CHAIR: Okay. We will be back
5 after our afternoon break.

6 ---Recess at 2:40 p.m.

7 ---On resuming at 3:00 p.m.

8 MADAM CHAIR: Mr. Lindgren.

9 MR. LINDGREN: Thank you, Madam Chair,
10 Mr. Martel.

11 Before the break, I had indicated that we
12 had four main submissions to make in relation to access
13 planning. I've covered two of them. I'm now proposing
14 to move on to the third main submission and, that is,
15 FFT submits that the MNR's access planning proposals
16 are deficient for a number of reasons.

17 This submission is outlined and discussed
18 in some detail at pages 123 to 131 of the written
19 argument and this submission by FFT essentially boils
20 down into five main points.

21 The first is that the MNR's proposals
22 primarily focus on accessing stands for wood extraction
23 purposes and, therefore, do not represent integrated
24 planning.

25 The second point is that the MNR lacks

1 policy or procedures to systematically identify and
2 protect roadless areas, and I'll be coming back to the
3 roadless area concept in a few moments.

4 The third point is that the MNR proposals
5 lack consideration of need, the null alternative and
6 the full range of environmental effects associated with
7 roads. That sounds a little bit like the submission I
8 made to you this morning, in fact it is. The access
9 planning process does not reflect the content
10 requirements of Section 5(3) of the Environmental
11 Assessment Act.

12 At most, Madam Chair, Mr. Martel, the
13 MNR's proposals only require what I've called an
14 operational analysis of proposed access roads. The
15 proposals from the MNR do not require EA style analysis
16 or environmental analysis.

17 And Mr. Bisschop called the MNR proposals
18 EA style. Madam Chair, Mr. Martel, we respectfully
19 disagree with Mr. Bisschop's description. If you look
20 at the MNR conditions respecting access, you'll find
21 that the MNR proposals only require planners to look at
22 a very limited range of parameters; namely,
23 effectiveness of access, use management construction
24 costs and effects on non-timber values.

25 Now, on its face that looks like enough

1 but in comparison to Section 5(3) it is not in our
2 respectful submission. The MNR proposals do not
3 require consideration of need, do not require
4 consideration of the null, do not require consideration
5 of the full range of environmental impacts on
6 environmental values which may, in fact, go beyond
7 non-timber values. For example, the MNR analysis does
8 not require any kind of socio-economic analysis of the
9 proposed access roads.

10 The fourth point, Madam Chair, is that
11 under the MNR proposals there is a lack of mandatory
12 direction or guidance respecting road location or
13 construction. There are guidelines, there are manuals,
14 there are codes of practice, all of which are not
15 binding, all of which do not set out firm rules as to
16 where you can or cannot put a road.

17 Fifthly and finally, under the MNR
18 proposals there's no requirement that access roads be
19 economically justified through cost/benefit analysis
20 and, in fact -- under the MNR proposals there's no
21 requirement that access roads be economically justified
22 through cost/benefit analysis.

23 Now, the Board has received some evidence
24 on the extent of economic analysis that is undertaken
25 in relation to access roads. This issue is discussed

1 in the written argument at paragraph 26 at pages 128
2 and 29 and you'll see there are transcript and
3 documentary references there.

4 The sum and substance of some economic
5 analysis undertaken by the MNR in relation to roads
6 seems to boil down this: Let's choose the road corridor
7 first and then do the economic justification, which
8 often then boils down to: Well, the longer the road is
9 the more it costs. Madam Chair, we see that as a
10 wholly deficient approach for road planning and, in our
11 view, a more rigorous approach is required.

12 A few moments ago I commented that we
13 don't need to pave over or gravel over every square
14 inch of the area of the undertaking, and I did not for
15 a moment intend to suggest that that is what the MNR is
16 proposing to do. We fully recognize that the MNR and
17 Industry are not intending to pave over every square
18 inch of the area of the undertaking, but the point I
19 want to make is this: There is a well developed road
20 network in most units in the area of the undertaking -
21 and I'll come to this point in a moment - and that is
22 why FFT wants to leave you with the message that we
23 should proceed cautiously before we start blasting new
24 roads into some of these areas, and that is why we need
25 a much more comprehensive and rigorous approach to

1 access planning.

2 Now --

3 MR. MARTEL: I smile a little bit because
4 it would look like southern Ontario then; wouldn't it?

5 MR. LINDGREN: That's precisely what
6 we're trying to avoid, Mr. Martel. And that's
7 precisely what brings me to my fourth and final
8 submission on roads and, that is, the Board should
9 approve a planning process which ensures that the
10 environmental impact of and the need for new access
11 roads are publicly and thoroughly examined in a
12 comprehensive manner.

13 Now, that submission is described in some
14 detail at pages 123 to 55 of the written argument and
15 that is where we propose to set out and describe FFT's
16 access planning proposals.

17 I'm not going to review all of these
18 submissions in any particular detail, but what I would
19 like to do at this time is emphasize a few of the
20 highlights which distinguish FFT's proposals from the
21 proposals from the MNR and the other parties.

22 Now, the first issue I'd like to
23 highlight is the matter of the 20-year primary road
24 corridor. In FFT's view the null alternative must be a
25 mandatory consideration at this 20-year stage,

1 particularly because of the long-term technical nature
2 of corridor planning. Now, the MNR has said in its
3 reply evidence that this would effectively revisit
4 so-called decisions in district land use guidelines.
5 As I've mentioned earlier today, this is not the case
6 since the DLUGS have not, in our view, predetermined or
7 pre-reviewed anything.

8 In FFT's view, Madam Chair, there is a
9 need for careful environmental analysis and full public
10 participation in the critical decision to access or not
11 access a given area, and that's the decision, the very
12 decision that timber management planners are making
13 today.

14 Now, if the Board accepts the MNR
15 proposals then, in our respectful submission, the
16 public will have been effectively shut out from one of
17 the most important decisions of all and, that is:
18 Should there be a road at all, should we be accessing
19 this area at all. Under the MNR's proposal that
20 critically important issue will not be dealt with at
21 the project level.

22 The second highlight of the FFT proposals
23 that I would like to draw the Board's attention to has
24 to do with the EA style analysis that would be required
25 under the FFT proposals, and this is dealt with at

1 pages 138 to 142 of the written argument. In short,
2 Madam Chair, Mr. Martel, FFT's access planning
3 proposals reflect the requirements of Section 5(3) of
4 the Environmental Assessment Act. The MNR's proposals
5 and the Industry's proposals do not. In particular,
6 FFT's proposals will require consideration of need and
7 consideration of the null alternative, FFT's proposals
8 will require analysis and assessment of the full range
9 of environmental effects associated with the proposed
10 access corridor, will require an examination of
11 mitigation strategies associated with that corridor and
12 alternative corridors. And as I've said, Madam Chair,
13 Mr. Martel, MNR's proposals and Industry's proposals do
14 not require that.

15 Now, the third and final highlight that
16 I'd like to describe and discuss with you is FFT's
17 roadless area proposal. This is an important issue,
18 Madam Chair, and it's an issue that is discussed at
19 pages 142 to 151 of the written argument.

20 The relevant FFT condition is condition
21 No. 42. As we discuss in our written argument, the
22 Board heard from Mr. Smith and Dr. Middleton and others
23 as to the benefits associated with keeping some areas
24 in a roadless state and that is why we urge you to find
25 that on the evidence there are a variety of ecological,

1 scientific and socio-economic benefits associated with
2 keeping some areas in a roadless state.

3 Now, these benefits are discussed at
4 paragraph 288, this is found on page 142 of the
5 argument, it's discussed elsewhere as well. But one of
6 the other benefits associated with roadless areas is of
7 course you can avoid the adverse impacts of access by
8 keeping certain areas free of roads.

9 We've already heard today and throughout
10 the past four and a half years that there are certain
11 values that can be affected by access roads, wilderness
12 values, recreational values and so forth. One solution
13 is to recognize those values, where they exist, and to
14 keep roads away from them where possible and where
15 appropriate. So if you do keep an area in a roadless
16 state or in a wilderness state then you can avoid, in a
17 very real sense, wildlife impacts or wilderness impacts
18 that we have heard about. That is the best form of
19 mitigation, avoidance.

20 Now, to a certain extent it seems almost
21 moot to talk about roadless areas given the
22 proliferation of access roads within the area of the
23 undertaking, and here I'm referring to the very large
24 map of access roads which was prepared by the MNR and
25 filed as an exhibit in this hearing, that is Exhibit

1 2294A. You'll recall that's the map that showed all of
2 the actual and planned primary and secondary roads in
3 the area of the undertaking.

4 And in light of the evidence, even the
5 MNR admitted in Board interrogatory No. 151 that in its
6 view and in the short term the area of the undertaking
7 is sufficiently accessed for timber management
8 purposes. However, in the same interrogatory the MNR
9 went on to state that it is still possible to identify
10 large roadless areas within the area of the
11 undertaking.

12 It is FFT's position that those roadless
13 areas are valuable non-timber resources which can be
14 and should be protected against the adverse effects
15 associated with access and related activities and that
16 is why the thrust of FFT's proposals is to require the
17 MNR to systematically evaluate these remaining roadless
18 areas with the view to keeping some, not all, but some
19 of these areas in a roadless state, and that should be
20 done to avoid the adverse effects associated with
21 access.

22 Now, Madam Chair, the MNR and other
23 parties have expressed some confusion over the term
24 roadless area, and on this point I would refer the
25 Board to page 144 to 47 of the FFT argument where the

1 evidence of Mr. Smith is discussed.

2 The fundamental point of his evidence on
3 this issue was that roadless areas are areas which are
4 essentially roadless and undeveloped. It sounds
5 circular, but that's the point: it's an area where you
6 don't have a lot of human presence, a lot of human
7 development. Now, that does not mean that an area has
8 to be absolutely pristine or free of any impact
9 whatsoever in order to qualify as a roadless area. In
10 fact it might be difficult, if not impossible, to find
11 those kind of areas in Ontario. And indeed, as Mr.
12 Smith indicated, even some harvested lands were
13 included in the U.S.'s roadless area system in order to
14 ensure the eventual production of wilderness areas as
15 these lands restored themselves over time.

16 Mr. Smith also testified that roadless
17 areas in the United States are deliberately managed to
18 minimize human influence or human impact, and that
19 means there are no commercial activities or permanent
20 roads permitted in roadless areas which are being
21 managed as wilderness under the U.S. Forest Service
22 system. And the reference there, Madam Chair, is
23 Volume 298, pages 53098 to 99. And in FFT's view,
24 these principles should apply to roadless areas in
25 Ontario.

1 Now, I want to hasten to add that FFT's
2 proposals are not intended to lock up all remaining
3 roadless areas and keep them in a roadless state
4 forever. To the contrary, Madam Chair, FFT's proposals
5 simply require the MNR to systematically review these
6 areas before roads go into them and, thus, you can
7 describe FFT's proposals as a look before you leap
8 approach. It's a true application of the precautionary
9 principle: Before you go in there, take a look to make
10 sure that you're not jeopardizing or compromising
11 significant wilderness values.

12 Under FFT's proposals, once these areas
13 have been assessed and a roadless area evaluation has
14 been completed, some of these roadless areas should be
15 managed as wilderness. So if, for example, there are
16 significant values in the area that would be
17 compromised by permitting access through timber
18 management activities, then that might be a reason to
19 manage this area as wilderness.

20 On the other hand - and this is what
21 happens in the United States situation as well - some
22 roadless areas may well end of having roads put in them
23 for timber management purposes. FFT fully acknowledges
24 that and it has specifically provided that roads can be
25 put into roadless areas for timber management purposes

1 under certain conditions.

2 But, again we stress, before that should
3 be done, before roads should go in, the MNR should
4 document that the roads and the timber management
5 activities facilitated by the roads will not cause
6 significant harm to the resources or non-timber values
7 within the roadless area. Again, it's a look before
8 you leap approach.

9 Now, if a road is going to go into a
10 roadless area, and we fully anticipate that some will,
11 then the presumption should be that a temporary road
12 will be built unless the necessity for a permanent road
13 can be documented and justified.

14 And, again, you'll see Madam Chair in Mr.
15 Smith's evidence that appears to be the approach
16 undertaken by the U.S. Forest Service; if you're going
17 to build a road into a roadless area it should be
18 temporary unless there's documented need for a
19 permanent road. And Madam Chair, we commend that
20 approach to the Board.

21 At pages 147 to 49 of the written
22 argument you'll see an indication of public support for
23 the concept of roadless areas and, as I've indicated
24 earlier today, we've reproduced some those transcripts
25 to indicate that there is public support for the idea

1 of roadless areas in Ontario.

2 Mr. Smith was also quite supportive of
3 FFT condition No. 42, that's our roadless area
4 provision, and he said this at Volume 298, pages 53103
5 to 04, Mr. Smith commented:

6 "I think these conditions are a strong
7 statement in support of roadless area
8 values. I think Ontario really needs
9 something like that if you're going to
10 call your planning integrated forest
11 planning because roadless values
12 associated with undeveloped areas and
13 wilderness are part of the spectrum of
14 values from forest lands."

15 Now, Mr. Freidin has said roadless areas
16 or wilderness areas are outside timber management,
17 they're outside of this Board's jurisdiction. Madam
18 Chair, we disagree with that. The issue of wilderness
19 protection is an issue that arises often in the context
20 of timber management planning.

21 We've heard from tourist operators who
22 want at least the appearance of wilderness protected.
23 You heard, for example, from Mr. George Nixon one of
24 FFT's lay witnesses on the potential impacts of roads
25 on his business. And because wilderness issues are

1 raised during the current or the proposed timber
2 management planning process, the MNR does attempt,
3 albeit sometimes unsuccessfully, to accommodate those
4 concerns through AOC planning.

5 Madam Chair, if wilderness protection is
6 an issue that can, in fact is being dealt with to some
7 degree in the timber management planning process, we
8 say there's a need to take a more systemic and
9 integrated approach to wilderness protection. We say
10 that instead of having timber management planners
11 dealing with the issue as a constraint, the issue of
12 wilderness protection should be dealt with up front in
13 a more systemic and integrated fashion, and that is
14 what our roadless areas proposals are intending to do.

15 It's for those reasons, Madam Chair and
16 Mr. Martel, that FFT recommends that the Board impose a
17 condition or conditions which require the MNR to
18 evaluate and protect roadless areas from the effects of
19 access and other timber management activities.

20 Let me conclude, Madam Chair, by
21 summarizing FFT's access planning submissions.
22 Firstly, roads are one of the most environmentally
23 significant timber management activities and the Board
24 has heard considerable evidence on the actual effects
25 of access.

1 Secondly, the MNR's proposals respecting
2 access are deficient because they do not ensure the
3 need for and the environmental impacts of new access
4 roads will be thoroughly assessed and publicly
5 assessed.

6 I should also say, thirdly, finally, the
7 Board should approve a planning process which requires
8 EA style analysis of proposed roads and which requires
9 an evaluation of roadless areas before a new road is
10 built to access such areas.

11 And Madam Chair, Mr. Martel, those
12 comments conclude our submissions on access planning.
13 I will now turn it back to Ms. Swenarchuk to continue
14 the discussion of environmental effects.

15 MS. SWENARCHUK: Before I give you our
16 submissions with regard to pesticides questions, I want
17 to respond to brief segments of the Industry argument
18 with regard to a couple of economic issues.

19 Now, the OFIA in both oral and written
20 argument has presented you with an overview of their
21 economic evidence regarding the importance of the
22 forest industry to the northern Ontario economy and the
23 importance of its competitiveness.

24 Now, Forests for Tomorrow has never
25 disagreed with these realities, that the Industry is

1 important to the northern Ontario economy, very
2 important, we agree; that it operates in a competitive
3 global economy, we also agree. In our
4 cross-examination of OFIA panel 1 and 2 and in the
5 evidence of Drs. Muller and Morrison we drew the
6 Board's attention to some other economic factors of
7 importance, particularly the extent of public subsidy
8 of the Industry and the issue that raises as to whether
9 public funds are being spent in the socially best way
10 at this time. And in our written argument I would
11 refer you to pages 61 to 83 and pages 234 to 240.

12 But fundamentally Forests for Tomorrow
13 does not disagree with the need to ensure community
14 stability in the north, that is fundamental to our
15 proposals regarding harvesting at the sustainable
16 level. However, with regard to two studies introduced
17 by the Industry in the course of their submissions
18 regarding economic issues, we differ and have some
19 submissions for you.

20 The first study is Exhibit 1035, it's the
21 Superior Forest Management Study and the transcript
22 references are at Volume 180. I'm looking at
23 references on page 31994.

24 Now, Ms. Cronk referred to this study as
25 standing for the proposition that the application of

1 moose guidelines and possibly as well fish habitat
2 guidelines have an important cost impact on the
3 Industry. Now, when we, however, look at the
4 conditions under which this study was admitted to you,
5 we see the following: this study was referred to by
6 the witness Mr. Lafreniere as the basis for an opinion
7 that he held that the guidelines had a significant
8 economic impact on the Industry and the study which was
9 done by someone working for him was then produced as
10 the basis of his opinion.

11 Now, we challenged the admissibility of
12 the report at that time on the grounds that the author
13 of it would not be produced, this was not a published
14 academic paper which enters into the literature and,
15 therefore, is treated in proceedings like this without
16 calling its author; rather the author would not be
17 called and we would not have an opportunity to
18 cross-examine on the report.

19 The following exchange then occurred.
20 Mr. Freidin asked then Chairman:

21 "Do I take it from your comments that
22 this report is not being received then as
23 evidence as to the proof of the fact
24 contained therein as to increased costs?"

25 And the Chairman said:

1 "That would be a reasonable
2 conclusion, Mr. Freidin."

3 Now, the consequences of the conditions
4 of the filing of this report are the following: it
5 cannot be considered as proof of the facts within it as
6 to increased cost from the use of the guidelines and it
7 would constitute an error of law for the Board to rely
8 on it for that purpose. Any details within it
9 regarding the effects of the guidelines must be
10 considered not to have been proven.

11 In addition to the clear legal effect of
12 the conditions under which it was filed, prejudice to
13 the parties would ensue if the Board considered the
14 facts within it proved because no cross-examination was
15 done, its author was not called, as I said, this is not
16 a published scientific paper, no one insisted on the
17 production of the author because it was clear that the
18 report was filed only with these limited conditions.

19 The report serves to support the
20 statement of Mr. Lafreniere that his opinion has a
21 basis, but not that the study is necessarily accurate
22 nor that the opinion of Mr. Lafreniere based on it is
23 an accurate opinion. We only know that he had a
24 certain opinion based on information which may or may
25 not be accurate in law. The Board has no basis to

1. assess the accuracy of the report. The bottom line
2. though is that it cannot be taken as proof of the facts
3. within it.

4. The second OFIA economic report on which
5. I wish to comment is the study done by Mr. Michael
6. Ross, it's Exhibit 1047, and I understand the Industry
7. to be arguing that it supports the proposition that the
8. creation of timber reserves could cost the forest
9. industry \$20-million a year. Now, the testimony
10. regarding this issue occurs in Volume 184 at pages
11. 32365 to 73.

12. Now, that \$20-million sum was
13. extrapolated from a specific area study involving part
14. of the operations of Abitibi-Price near Thunder Bay
15. included in Exhibit 1047. However, in
16. cross-examination Mr. Ross made it abundantly clear
17. that the methodology relied upon in the study itself
18. made the extrapolation of the figures to the entire
19. province unreliable.

20. With regard to the methodology and the
21. limitations of the study, the land in question was
22. examined by way of GIS. This approach restricted the
23. study to a single company example as the camp 11 area
24. in Abitibi-Price's Spruce River FMA was, and this is a
25. direct quote:

1 "...perhaps the only area in the
2 province readily available for such an
3 analysis."

4 So it's a single company, single camp
5 area.

6 It was further significantly restricted
7 by the absence of any topographical data about the area
8 in question, and this is at page 32509 of the
9 transcript and at page 20 of the report.

10 Now, having admitted that the study did
11 not include any topographical specificity, Mr. Ross
12 asserted in the document that:

13 "We understand that the study
14 area is representative of Industry
15 operating conditions in the area of the
16 undertaking."

17 However, in cross-examination he conceded
18 that given the lack of topographical data and the vast
19 diversity of terrain in the north it would be
20 impossible to hold any particular area out as
21 representative. However, in writing the report, having
22 concluded that the area was representative, wrongly in
23 our submission, the following assumptions were made:
24 that the timber in question would be shoreline reserves
25 all of which would be harvestable and harvestable at

1 the same cost as other wood not in these locations.
2 There was no factoring of the possibility of lower
3 quality wood or increased harvesting cost due to often
4 rugged terrain. Further, the road costs were amortized
5 over a three-year period despite the clear evidence
6 that the anticipated road use would be for a
7 potentially much longer period. Further, the cost
8 estimates were based on the inflexible application of
9 the new timber management guidelines. And I quote:

10 "A hypothetical scenario in which the
11 new timber management guidelines were
12 interpreted literally as a set of rules
13 or mandatory requirements applied in a
14 rigid and mechanistic fashion. In this
15 scenario the guidelines would be applied
16 as rules with no discretion and no
17 allowance for extenuating circumstances."

18 Mr. Ross, however, conceded that, thus,
19 the figures were to be based on a scenario which is:

20 "...as extreme as one can get in the
21 context of the existing guidelines."

22 That's at page 32521. They assume that
23 all lakes are cold water lakes and that all lake shores
24 are steep. They admit that this tends to overstate the
25 size of estimated reserves.

1 Given these assumptions, Mr. Ross,
2 himself conceded that:

3 "It would take a great leap to
4 conclude that the kind of cost figures
5 that were associated with that particular
6 study are generalizable to the entire
7 area of the undertaking. In fact, he
8 said, I think that the way we figured it
9 that if they were generalizable this is
10 what the result would be, but if one were
11 seriously interested in knowing what the
12 total financial implications of applying
13 these two scenarios were, those two
14 reserve scenarios I'm referring to for
15 Ontario as whole or for the area of the
16 undertaking as a whole, presumably one
17 would want to look at more than one
18 particular case study. It would probably
19 take quite careful research strategy."

20 And that's at 32514. So I'm going to
21 conclude on that subject, Madam Chair, Mr. Martel, with
22 our disagreement with the submissions advanced by Ms.
23 Cronk with regard to the value, the admissability and
24 the conclusions which can be taken from those reports.

25 Now, in the time remaining this afternoon

1 I'll try to begin and conclude our submissions with
2 regard to pesticide use and I begin with an overview.

3 Of the parties proposing any terms and
4 conditions in connection with herbicide or insecticide
5 use in the area of the undertaking only Forests for
6 Tomorrow has proposed a comprehensive detailed
7 management approach to the issue as reflected in
8 condition 96 which is at page 44 of our terms and
9 conditions and following. Both the Ministry and the
10 Industry approach to this matter will result in
11 business as usual or worse.

12 The position of Forests for Tomorrow is
13 clear on the evidence. Reducing chemical dependence
14 within an integrated pest management framework is
15 reasonable, appropriate and past due because chemicals
16 are not essential, they are not the only tools
17 available, there is considerable public dissatisfaction
18 respecting their use as evidenced in these proceedings,
19 and they do have significant adverse environmental and
20 human health effects. In particular this is true for
21 2,4-D for which FFT proposes special restrictions
22 within 12 months of any approval granted by this Board
23 to the undertaking.

24 It is the respectful submission of FFT
25 that the MNR and the Industry pay lip service to IPM

1 principles, integrated pest management principles,
2 while admitting that most of their tending initiatives
3 are accommodated accomplished today and will be
4 accomplished in the future with chemicals. They also
5 wish to turn back the clock to permit again chemical
6 insecticide use for protection activities. This is the
7 wave of the past not of the future. For all of the
8 reasons cited in our written submissions, as well as
9 our following oral submissions, we urge the Board to
10 adopt FFT condition 96.

11 And I will first address issues
12 pertaining to herbicides and then to pesticides,
13 insecticides.

14 With regard to herbicides, we'll look
15 first at questions of tending. The MNR and Industry
16 claims regarding the need for and effectiveness of
17 herbicides generally and 2,4-D in particular are
18 overstated. The evidence is at best inconclusive and
19 does not support the conclusions of the Industry and
20 the Ministry to the Board, the conclusions they would
21 like this Board to draw.

22 And we refer you in this context to the
23 FFT argument at pages 327 to 332 to Ms. Krishka's
24 evidence for the MNR which is inconclusive in the view
25 of FFT at pages 327 and 328. The MNR reply evidence

1 clearly indicates that MNR only now is undertaking
2 growth and yield studies by treatment type than can
3 provide answers to these very questions. If the OFIA
4 witness McCormack's and related evidence conclusively
5 demonstrated the efficacy of the herbicides - and this
6 is referred to in the OFIA evidence at volume 2, pages
7 263 to 273 - why would the MNR introduce Exhibit 2272
8 regarding its growth and yield studies rather than
9 simply rely on the OFIA cited material.

10 Non-chemical alternatives including
11 manual treatments are viable options but have not been
12 the subject of research and development programs if at
13 all until recently. This is in the FFT argument at
14 pages 332 to 335. We refer to the use in the Siszlaw
15 National Forest of the U.S. of non-chemical
16 alternatives to pesticides since 1983.

17 Industry witnesses Tomchuk and Bunce were
18 not aware of any manual cleaning research and
19 development programs in Ontario.

20 The Ministry and Industry claims
21 respecting the cost effectiveness of herbicides over
22 other tending techniques do not internalize the costs
23 of handling the controversy and the wide-spread
24 dissatisfaction the public has about using chemicals in
25 the forest. And this we refer to in the FFT argument

1 page 334. As Mr. Smith said, it's not a free ride by
2 any means.

3 Now, with regard to wildlife and aquatic
4 resources. The herbicide 2,4-D appears to have
5 significant potential for direct toxic effects on fish
6 contrary to the Ministry and Industry submissions.
7 This is found in the FFT argument at pages 343 to 348.

8 The herbicide 2,4-D appears to have
9 potential for significant residues on various sources
10 of food ingested by wildlife including berries, forage,
11 seeds and insects contrary to the submissions of the
12 Ministry and the Industry. This is found in FFT
13 argument at page 348 to 350 and 355 to 356.

14 The herbicide 2,4-D appears to have
15 significant potential for direct toxic effects on
16 wildlife contrary to MNR and Industry submissions. And
17 this is further explained in the FFT argument at pages
18 350 to to 357.

19 The Weeks study, that's Exhibit 1233,
20 relied upon extensively by Industry witnesses, which is
21 Craig, with respect to the herbicide 2,4-D, in fact
22 reveals many potential problems with this product in
23 connection with wildlife and aquatic resources in the
24 forest environment. This study was commissioned by
25 U.S. Forest Service region which ultimately decided to

1 neither permit the use of 2,4-D or products containing
2 2,4-D to be used in the national forests they managed
3 nor to allow the aerial spraying of glyphosate. And
4 that's further explained in the FFT argument at pages
5 358 to 359.

6 The Industry argument fails to
7 acknowledge that witness Craig's entire testimony was
8 based on Weeks and we refer you to the Industry
9 argument at volume 2, pages 346 to 349.

10 With regard to human health
11 considerations, the evidence reveals great scientific
12 and regulatory uncertainty regarding safety of the
13 herbicide 2,4-D and its potential to cause cancer.
14 That uncertainty, in our submission, should be resolved
15 in favour of adopting FFT condition 96 regarding 2,4-D.
16 Again, we're talking about the application of the
17 precautionary principle. And this is further
18 elucidated to in the FFT argument at pages 361 to 363.

19 The Ministry and Industry witnesses
20 failed to advise this Board of the fact that in the
21 U.S. not only does U.S. EPA but also the U.S. Forest
22 Service has authority to regulate the availability and
23 use of chemicals in forestry. In fact, the evidence
24 revealed that far more onerous restrictions including
25 bans are being implemented in some forest regions of

1 the U.S. Forest Service with regard to 2,4-D than is
2 currently the case under the U.S. EPA.

3 In our submission this Board is entitled
4 to take account of the actions of the U.S. Forest
5 Service in this regard and it is appropriate that the
6 Board do so in the circumstances of the timber
7 management hearing. We refer you further to our
8 argument at pages 366 to 7.

9 Turning now to issues of insecticide use,
10 first for protection. It's our submission that the
11 evidence raises significant questions about the need to
12 treat forests with insecticides, including chemical
13 insecticides, because the principal focus of insect
14 attack appears to be on a tree species which is the
15 balsam fir that are not the major commercial species in
16 the area of the undertaking. We refer you again to
17 pages 335 to 338.

18 There's considerable doubt that the
19 province's professional foresters regard chemical
20 insecticides as essential and effective tools for
21 protection activities. And we recall to your attention
22 the issue of the failed OPFA resolution on this
23 question of 1990 and our further submissions in writing
24 at pages 338 to 340.

25 Now, with regard to wildlife and aquatic

1 resources, even MNR and the Industry witnesses
2 recognize that there are problems with chemical
3 insecticides despite advocating return to their use.
4 And this is in our written argument at pages 359 to 60.

5 The practical moratorium on the use of
6 chemical insecticides which has existed since 1984/85
7 in Ontario's forests through three government
8 administrations, as Mr. Martel recalled, should be
9 confirmed by the Board's adoption of FFT proposed
10 condition 96. And we have further submissions in this
11 regard at pages 336 and 37 and 360.

12 With regard to human health, several of
13 the chemical insecticides proposed for use in the area
14 of the undertaking, aminocarb and phenitrothion are not
15 registered for food uses even in the U.S. This means
16 they do not meet the most stringent requirements U.S.
17 EPA sets out for chemical pesticides. Indeed,
18 aminocarb is no longer even registered in the U.S.,
19 they should not be used here either in our submission.
20 Further details you'll find at pages 369 to 370.

21 Now, I'd like to turn for a moment to
22 some of Ms. Cronk's submissions with regard to Mr.
23 Marek, particularly first of all with regard to the
24 spraying of herbicides.

25 If I heard her correctly, Ms. Cronk

1 interpreted his evidence to indicate that he
2 essentially supports the spraying of herbicides. But I
3 want to recall to the Board that it's important to
4 understand his reference to spraying in accordance with
5 the timber management plan which was the citation which
6 was given to you. It's during the planning process, of
7 course, that the public is able to express its
8 agreement or disagreement with spraying and Mr. Marek
9 respects those concerns.

10 As he stated in the reference which is in
11 the transcript at volume, 46574, and then 46579, 80 and
12 85 to 86, he talked about how the forester goes to the
13 public in the timber management planning, how you can
14 use spraying if it's approved in a proper timber
15 management plan.

16 Now, I submit that in the context of all
17 the evidence that you heard from Mr. Marek, his
18 acceptance of herbicide spraying is qualified by
19 whether the public accepts it during the timber
20 management planning process, and I suggest that that is
21 a different position that has been advanced by the
22 Industry. And I don't believe we have received
23 submissions or evidence from the Industry that the use
24 of herbicide spraying should be dependent on whether or
25 not public attitude is in support of it.

1 Now, also with respect to Mr. Marek's
2 acceptance or non-acceptance of chemical insecticides,
3 I suggest that Ms. Cronk has made rather a leap in
4 suggesting that Mr. Marek necessarily approves of the
5 use of chemical insecticides.

6 I believe, and the record will indicate,
7 that it's not clear when Ms. Cronk asked Mr. Marek
8 whether foresters should have at their disposal all the
9 tools of science I suggest it is not clear that he
10 understood that question to include chemical
11 insecticides. I suggest to you the record does
12 indicate that he was in support of further research
13 with regard to chemical insecticides, but I do not
14 agree that one can conclude from what is on the record
15 that he clearly supported the use of chemical
16 insecticides.

17 Now, Ms. Cronk in this context also
18 suggested that there hasn't been a groundswell of
19 public opposition to spraying and that the Industry
20 found only two public submissions on the issue. I wish
21 to refer you to Forests for Tomorrow's Appendix A in
22 which six individuals are quoted as having expressed
23 their opposition to the effects of herbicides sprayed.
24 I think we are all aware that in northern Ontario, as
25 in the United States according to the testimony of Mr.

1 Smith, spraying of herbicides on forest lands is
2 controversial to the public.

3 And, finally, with regard to the
4 directions of the future with regard to pesticide use,
5 I would like to recall to your attention Exhibit 2315
6 which is the evidence you received in summary form of
7 the government's sustainable forestry program, and on
8 the first page of that exhibit we see the indication
9 that as part of that program the province's
10 silvicultural program will be enhanced to an enlarged
11 research program and the field testing of alternatives
12 to current practices including options to reduce the
13 use of chemical herbicides.

14 And in Minister Wildman's statement to
15 the Legislature with regard to the program, he said the
16 following, and this is also included in the exhibit:

17 "We will also develop programs to
18 ensure that new knowledge is promptly
19 applied in the field and that our
20 vegetation management practices are aimed
21 at reducing our dependence on forest
22 herbicides. In line with that
23 commitment I would like to announce that
24 in this first year of the new program the
25 Ministry will reduce by 20 per cent the

1 aerial spraying of herbicides across the
2 province."

3 The date of this statement is May 7th,
4 1991:

5 "But one-fifth less than five years
6 means that about 80,000 hectares will be
7 sprayed. The program I am announcing
8 today recognizes the need to
9 systematically reduce our dependence on
10 chemical herbicides by using
11 environmentally sensitive alternatives as
12 they become available. We can have a
13 successful forest renewal program and
14 apply more stringent standards to
15 herbicide use."

16 In conclusion, Madam Chair, Mr. Martel,
17 it's the view of Forests for Tomorrow that the wave of
18 the future with regard to tending is away from
19 herbicide spraying and with regard to use of pesticides
20 generally in the forest, the wave of the future is to
21 look for alternatives. That is the general approach of
22 our condition 96 for integrated pest management and we
23 respectfully urge that you include that condition
24 should you grant an approval to the undertaking.

25 Now, that concludes our submissions with

1 regard to pesticides. We are going to now turn to an
2 entirely new topic and I respectfully request that we
3 resume at 9:00 in the morning.

4 MADAM CHAIR: We will do that, Ms.
5 Swenarchuk. We will adjourn for the day and return at
6 nine. Thank you.

7 Do you have an idea of how long you'll be
8 tomorrow?

9 MS. SWENARCHUK: We think we'll finish by
10 the afternoon break.

11 MR. FREIDIN: Madam Chair, just one
12 matter. There was one outstanding undertaking that the
13 Ministry of Natural Resources received by Mr. McNicol
14 during one of the reply panels dealing with
15 implementation manuals, and I can hand out copies of
16 those and perhaps the answer to the undertaking dated
17 October the 26th, 1992.

18 So there's a covering letter of October
19 the 26th, 1992 from Kate Murphy to Mr. Lindgren and
20 attached is a memorandum from John McNicol directly to
21 Mr. Lindgren dealing with the undertaking given during
22 MNR reply evidence panel No. 1 found at Volume 386
23 pages 66583 to 66591. Mr. McNicol's memorandum is
24 dated October the 23rd, 1992.

25 So if that could be given an exhibit

1 number and I'll provide copies to the parties after we
2 adjourn.

3 MADAM CHAIR: Any objections, Ms.
4 Swenarchuk.

5 MS. SWENARCHUK: (nodding negatively)

6 MADAM CHAIR: It looks like exhibit 2322.

7 ---EXHIBIT NO. 2322: Covering letter dated October
8 26th, 1992 from Kate Murphy to Mr.
9 Lindgren and attached memorandum from
10 John McNicol to Mr. Lindgren dealing with
11 undertaking given during MNR reply
evidence panel No. 1 found at Volume 386
pps 66583 to 66591 dated October 23rd,
1992.

12 MS. SWENARCHUK: Madam Chair, I have
13 never received a response to my request that the
14 memorandum of the Chief of the U.S. Forest Service with
15 regard to the reduction of clearcutting on those lands
16 be admitted. This I sent to you in a letter some weeks
17 ago, my rationale being that it was current, it
18 occurred only in June, it was not available to us
19 before early this month and that it was relevant to the
20 question that I think is quite clearly before you of
21 what the trend in practice is on U.S. Forest lands. As
22 I say, I haven't received a response to that.

23 MADAM CHAIR: The Board will have
24 something to say about that tomorrow, Ms. Swenarchuk.
25 Thank you.

1 ---Whereupon the hearing was adjourned at 3:55 p.m., to
2 be reconvened on Tuesday, October 27th, 1992,
3 commencing at 9:00 a.m.
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